IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MARIA S. MIDCAP, individually and as Administratrix of the Estate of TERRY L. MIDCAP, NATALIA MIDCAP, SHARON MIDCAP, CARLA MIDCAP, and ALLSTATE INSURANCE COMPANY a/s/o TERRY MIDCAP (deceased) and MARIA S. MIDCAP,	:	C.A. No. 01C-03-042 WLW
Plaintiffs,	:	
v.	:	
SEARS, ROEBUCK AND CO., EAST BAY TRANSPORT, INC., and SOUTHERN STATES MILFORD COOPERATIVE, INC.,	:	
Defendants.	:	

Submitted: February 17, 2004
Decided: May 26, 2004

ORDER

Upon Defendant Sears' Motions for Remittitur or New Trial and Motion for Judgment as a Matter of Law. Denied.

I. Barry Guerke, Esquire, Parkowski Guerke & Swayze, P.A., Dover, Delaware, attorneys for the Midcap Plaintiffs.

Paul R. Bartolacci, Esquire, Cozen O' Connor, Philadelphia, Pennsylvania, attorneys for Plaintiff Allstate Insurance Company.

William J. Cattie, III, Esquire, Cattie and Fruehauf, Wilmington, Delaware, attorneys for Defendant Sears, Roebuck and Co.

Daniel P. Bennett, Esquire, Heckler & Frabizzo, Wilmington, Delaware, attorneys for Defendant Southern States Milford Cooperative, Inc.

WITHAM, J.

Introduction

Before this Court are the post trial motions filed by Defendant Sears. Sears has filed motions for remittitur or new trial concerning the wrongful death awards and the survival action. In addition, Sears has filed a motion for a new trial alleging that the verdict was against the weight of the evidence. Finally, Sears has filed a motion for judgment as a matter of law or a new trial as to the survival action. Plaintiffs Midcap and Allstate have opposed these motions.

Background

This litigation stems from an explosion which occurred at the home of Terry and Maria Midcap, killing Terry and destroying the family home. Following a three week trial, the jury returned a verdict against Sears in favor of Allstate and the Midcaps. The following damages were awarded:

Maria S. Midcap	$1,084,794.00
Natalia Midcap	$ 271,198.00
Sharon Midcap	$ 271,198.00
Carla Midcap	$ 542,396.00
Estate of Terry Midcap (survival action)	$ 500,000.00
Allstate Insurance Company	$ 462,116.25
TOTAL	$3,131,702.25

Sears is now requesting that this Court reconsider the decision of the jury in

its verdict and award of damages. Plaintiffs contend that the jury's verdict is consistent with the evidence presented and should be maintained.

Discussion

Motion for New Trial

Sears contends that the jury's verdict with respect to the finding of no comparative negligence by Terry Midcap and the finding that the fitting on the stove was installed by Sears or East Bay Transport acting as an agent for Sears was against the weight of the evidence. Based upon this, Sears has requested that the Court grant a new trial pursuant to Superior Court Civil Rule 59. Plaintiffs contend that sufficient testimony was presented to support the jury's findings.

When considering a motion for a new trial on the ground that the verdict was against the weight of the evidence, the Court must weigh the evidence in order to determine if the verdict is one which a reasonably prudent jury would have reached.[1] The Delaware Supreme Court, in *Storey v. Camper,* held

> [A] trial judge is only permitted to set aside a jury verdict when in his judgment it is at least against the great weight of the evidence. In other words, barring exceptional circumstances, a trial judge should not set aside a jury verdict on such ground unless, on a review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result.[2]

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[1] *Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del. 1997) (citing *McCloskey v. McKelvey,* 174 A.2d 691, 693 (Del. Super. Ct. 1961)).

[2] 401 A.2d 458, 465 (Del. 1979).

Thus, this Court must give deference to the jury's verdict and may only grant Defendant's motion if it finds the jury's verdict was against the great weight of the evidence.

Sears contends that the evidence does not support the jury's finding of no comparative negligence against Terry Midcap. In support of this, Sears argues that the statements given by Carla Midcap previously concerning the conversation she had with her father regarding the odor of gas in the house were inconsistent with her testimony at trial. Sears relies upon the report of Detective Bowers taken on the morning of the explosion in which he wrote that Carla said that she told her father the house smelled like gas when she returned to the house at approximately ten o' clock that night. In addition, Detective Bowers testified during the trial that he remembered her saying that Terry said there was nothing to worry about because the gas odor was from them moving the stove earlier. However, this statement was not contained in his report prepared shortly after the conversation. Sears relied further upon an additional statement made by Carla a few days after the explosion, while accompanied by her sister and then counsel, in which she said that she told her father about the smell of the gas but said that she did not know if he heard her. Finally, Sears refers to the testimony of April Reh, who said that she heard Carla use the words " Poppa" and " gas" when speaking to her father in " Spanglish." Plaintiffs point out that in her rebuttal, Carla testified that she did not speak " Spanglish" to her father, only to her mother.

Sears also asserts that comments made by Plaintiffs' counsel during closing

arguments may have been prejudicial and could have led the jury to reach its verdict based on prejudice. Counsel for the Midcaps stated in his closing argument:

> You represent the community and its attitude toward safety and what defendant Sears and Southern States and their representatives ought to do with respect to safety. Not only for these plaintiffs, but for the entire community. It is up to you to say whether the conduct of Sears and Southern States under the circumstances here meets with the community's approval. If you stamp their conduct with your approval, it will continue. It will be the standard with which others will be guided. If, on the other hand, you find in favor of the plaintiffs, you will reject this kind of conduct by your verdict. You set the standard in this community. You can set a new and better safety standard.
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> There is no reason for Delaware to be a second class citizen in this regard. Delaware is entitled to the same standard of safety as New York City, Philadelphia, or Pittsburgh. The size of the community makes no difference, nor does the fact that Kent County is largely rural. Delaware shouldn't have to settle for second rate standards. Don't settle for second rate safety. Put Delaware and Kent County standards up there where they belong with the first class citizens.[3]

Sears did not object to the comment at the time it was made or even after Plaintiffs completed their closing arguments. This is the first time this issue is being raised.

In order to grant a new trial based upon an improper comment by counsel, the Court would have to find that the comment was significantly prejudicial so as to

[3] *Midcap v. Sears, Roebuck & Co.*, Excerpt of Trial, Vol. L, October 31, 2003, pp. 40-41.

deny Sears a fair trial.[4] The case that Sears points to discusses much more egregious comments than this one.[5] The other cases which Sears cites are not factually similar to this case, but are cited only to support its proposition that the jury's assessment of comparative negligence could be the result of unfair prejudice.[6] However, Sears has failed to establish how it was prejudiced by this comment and has not offered any explanation for failing to object at the time the statement was made.

After weighing the evidence, this Court finds that the evidence presented could lead a reasonable jury to conclude that Terry Midcap was not aware of the propane filling his home and thus was not comparatively negligent in this case. It is clearly within the province of the jury to determine the credibility of witnesses, and as long as the jury's decision is supported by the evidence it will stand. While this Court might have reached a different conclusion regarding the issue of comparative negligence, the evidence presented is sufficient to support the jury's finding of no comparative negligence on the part of Terry Midcap. In addition, this Court finds that the comment made by Plaintiffs' counsel during closing arguments

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[4] *Deangelis v. Harrison,* 628 A.2d 77, 80 (Del. 1993).

[5] In *Massey-Ferguson, Inc. v. Wells,* 421 A.2d 1320, 1324 (Del. 1980), the comment was to " send the people that have come here back to Iowa and back to Canada" used in an attempt to appeal to local emotions. The Supreme Court did order a new trial of all issues because a proper objection was raised at the time of the comment and the trial judge failed to issue a curative instruction.

[6] *See Schoettner v. Star Enterprises,* 1997 Del. Super. LEXIS 621, *and Ayers v. Morrison,* 1996 Del. Super. LEXIS 144.

was not significantly prejudicial to Sears. The hyperbole of the Plaintiffs' counsel is somewhat excessive but not so to raise an objection. Therefore, Defendant's motion for a new trial based upon the jury's finding of no comparative negligence is ***denied.***

In addition, Sears contends that the evidence did not support the jury's finding that Sears or its authorized agent installed the valve and stove in the Midcap home. Sears states in its motion that all of the documentary evidence indicates that the Plaintiffs did not pay for installation but only delivery of the stove. Sears also points out that evidence was presented that deliveries made from the floor at the Dover store were not made by Sears trucks, but rather by an independent trucking company driving their own company truck and wearing their own company's uniform. In addition, Sears contends that the contradictory statements made by Carla Midcap should have caused the jury to discredit any testimony from her. In this case, Carla originally stated she did not know who delivered the stove, but later said that she remembered the Sears truck and Sears deliverymen making the delivery. Finally, Sears points to inconsistencies in Maria Midcap's testimony and the documentary evidence presented by Sears regarding the repairs of her original stove and the delivery of the new stove.

Again Sears is asking this Court to set aside the jury verdict. In order to do this, the Court would have to determine that the jury's verdict was against the great weight of the evidence. The jury can choose which testimony to believe. It may be that the jury simply found that the documentary evidence presented by Sears was not

credible or accurate. They could have concluded that although there were some inconsistencies in the testimony of Maria and Carla, they were still credible witnesses. The jury's verdict with respect to the installation of the stove does not appear to be against the great weight of the evidence. It was reasonable for the jury to conclude that Sears or its authorized agent installed the stove even though the Midcaps only paid for delivery. The Court will not substitute its view of the evidence for the view of the jury when that is the issue. Based upon this, Sears' motion for a new trial is ***denied.***

Survival Action

Sears has filed two motions with respect to the survival action: A motion for remittitur or in the alternative a new trial based upon the amount of the award and a motion for judgment as a matter of law or a new trial based upon the expert testimony of Cyril Wecht, M.D. Plaintiffs oppose both motions.

Motion for Remittitur or in the Alternative a New Trial

Sears contends that the amount the jury awarded to Terry Midcap's estate for his pain and suffering prior to death was excessive as compared to other survival action awards made in Delaware. In addition, Sears argues that the Court erred in failing to give the requested jury instruction regarding damages for pain and suffering.

Amount of Award

Superior Court Civil Rule 59 provides that a new trial may be granted " for any of the reasons for which new trials have heretofore been granted in the Superior

Court."[7] Great deference is given to jury verdicts in Delaware.[8] However, the Court has the power to set aside a jury verdict that is clearly excessive.[9] The Supreme Court has held, " A verdict will not be disturbed as excessive unless it is so clearly so as to indicate that it was the result of passion, prejudice, partiality, or corruption; or that it was manifestly the result of disregard of evidence or applicable rules of law."[10] The Court went on to state, " A verdict should not be set aside unless it is so grossly excessive as to shock the Court' s conscience and sense of justice; and unless the injustice of allowing the verdict to stand is clear."[11] However, " when there is any margin for a reasonable difference of opinion in the matter, the Court should yield to the verdict of the jury."[12]

In this case, the jury heard testimony regarding the violent propane explosion that occurred at the Midcap home. The explosion had such force that it caused Mr. Midcap to be knocked out of his bedroom landing on the driveway. Dr. Wecht provided testimony indicating that the decedent experienced conscious pain and

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[7] Super. Ct. Civ. R. 59(a).

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

[9] *Aastad v. Riegel,* 262 A.2d 652 (Del. Super. Ct. 1970).

[10] *Riegel v. Aastad,* 272 A.2d 715, 718 (Del. 1970) (citing *Bennett v. Barber,* 79 A.2d 363 (Del. 1951)).

[11] *Riegel,* 272 A.2d at 718.

[12] *Storey,* 401 A.2d at 464, n.6.

suffering for fifteen to thirty seconds prior to his death. Both medical experts, Dr. Wecht and Dr. Hofman, testified that the injuries suffered by Mr. Midcap prior to death would have been extremely painful if he had been conscious. Although Dr. Hofman testified that Mr. Midcap would not have suffered any conscious pain, it is clear that the jury in this case relied upon the testimony of Dr. Wecht. When a jury is presented with contradictory statements by experts, the jury is entitled to reject one expert's testimony and accept the other's.[13]

Based upon the evidence presented to the jury regarding the injuries sustained by Mr. Midcap and the pain he experienced, an award of $500,000 for the survival action appears to be in a range supported by the evidence and does not shock the Court's conscience or sense of justice. Therefore, Defendant's motion for remittitur or a new trial with respect to the survival action on the basis of the amount of the award is ***denied***.

Jury Instructions

Sears contends that the jury instruction given by the Court regarding the survival action was improper in that the Court did not include the following language requested by the Defendant:

> Proof of such pain and suffering as are substantially contemporaneous with death or mere incidents to it, or as to a short period of insensibility intervening between the injury and death, is not sufficient.

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[13] *Mays v. Henry*, 2001 Del. Super. LEXIS 400, *13.

A jury instruction must give a correct statement of the law and must be reasonably informative and not misleading.[14] The instruction as given by the Court stated:

> SURVIVAL ACTION: RECOVERY OF DAMAGES FOR CONSCIOUS PAIN AND SUFFERING, FEAR, FRIGHT AND TERROR BY DECEDENT BEFORE DEATH
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> Under Delaware law, a claim for pre-death pain, suffering, fear, fright and terror is not extinguished by the death of the victim. Such damages are recoverable and a separate award for them may be made by the jury where the decedent did not die instantaneously but there was some appreciable interval of conscious pain and suffering before death. What must be shown is that death was not instantaneous and that the decedent experienced some conscious pain and suffering.
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> Therefore, if you find by a preponderance of the evidence that the death of Terry Midcap was not instantaneous but that he experienced conscious pain and suffering, fear, fright, and/or terror for some amount of time before he died, then you should include in your award an amount of damages to compensate for that.

Cases decided by the Superior Court have established that in order to recover for pain and suffering prior to death, the Plaintiff must establish that death was not instantaneous and that there was an appreciable period of pain and suffering.[15] The jury instruction as provided to the jury in this case accurately stated the law and did not mislead the jury. Therefore, Defendant's motion for a new trial as to the

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[14] *Cabrera v. State,* 747 A.2d 543, 544 (Del. 2000).

[15] See *Magee v. Rose,* 405 A.2d 143, 146 (Del. Super. Ct. 1979), *Fall v. Evans,* 1989 Del. Super. LEXIS 137, *5 *aff'd Fall v. Evans,* 577 A.2d 752 (Del. 1990), and *Weimann v. Cannon*, 1997 Del. Super. LEXIS 34, *23.

survival action on the basis of the jury instruction is ***denied***.

Motion for Judgment as a Matter of Law or a New Trial as to the Survival Action

Sears contends that the Court erred in permitting the Plaintiffs' expert forensic pathologist testify regarding a theory which was not explicitly discussed in his report and which they allege has not been subjected to peer review and publication. Cyril Wecht, M.D., testified in his trial deposition regarding a theory that residual oxygen left in Mr. Midcap's brain following the severe injuries would have caused him to experience conscious pain and suffering for approximately 15 to 30 seconds after the explosion. Dr. Wecht's report, which had been supplied to the Defendants prior to his deposition, relied upon the lack of injuries to Mr. Midcap's head and brain as a basis for Dr. Wecht's opinion that death was not instantaneous.

Because the jury has already rendered its verdict, the Defendant is renewing its motion for judgment as a matter of law pursuant to Superior Court Civil Rule 50(2)(b) or, in the alternative, moving for a new trial pursuant to Superior Court Rule 59. When a motion for a judgment as a matter of law is made by the defendant, it is the duty of the trial judge to determine whether, under any reasonable interpretation of the evidence, the jury could justifiably find in favor of the plaintiff and against the defendant.[16] The evidence must be viewed in a light

[16] *Ebersole v. Lowengrub,* 208 A.2d 495 (Del. 1965).

most favorable to the non-moving party, here the Plaintiffs.[17] With respect to a motion for a new trial, the jury's verdict is given great deference,[18] and the Court must determine whether the verdict was against the great weight of the evidence.[19]

Delaware law has adopted *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[20] in assessing expert testimony. As set forth in *Daubert*, when faced with a proffer of expert scientific testimony, the trial judge, acting in its "gatekeeper" role, must determine whether the expert is testifying to scientific knowledge that will assist the trier of fact to understand or determine a fact in issue. This requires a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether it can be properly applied to the facts in issue. In *Nelson*, the Supreme Court emphasized that the trial court should apply the Delaware Rules of Evidence in determining the admissibility of expert testimony. Rule 702 of the Delaware Rules of Evidence allows expert testimony if "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the case." In addition, the following factors were set forth in *Daubert* which serve as a guide to assist the trial court in determining the

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[17] *Russell v. Kanaga,* 571 A.2d 724 (Del. 1990).

[18] *Young,* 702 A.2d at 1236.

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

[20] 509 U.S. 579 (1993). *See Nelson v. State,* 628 A.2d 69, 73 (Del. 1993).

admissibility: whether the reasoning or methodology underlying the testimony is scientifically valid; whether the theory or technique can be properly applied to the facts in issue; whether the theory can be tested; whether the theory or technique has been subjected to peer review or publication; the known or potential rate of error; and acceptability in the scientific community.[21]

The Defendant here is not challenging Dr. Wecht's knowledge, skill or experience necessary to qualify as an expert. Rather, Sears is challenging the admissibility of Dr. Wecht's statements which rely upon the residual oxygen theory. Dr. Wecht testified that the residual oxygen theory was developed from a study conducted in relation with the first heart transplant. The study found that there was sufficient oxygen remaining in the brain to sustain brain life for several minutes even after the heart had been removed from the body. Based upon this study, Dr. Wecht testified that it was his medical opinion that Mr. Midcap could have experienced pain and suffering for 15 to 30 seconds following the injuries he sustained. Although Dr. Wecht did not point to any publications which have discussed this theory in connection with an explosion like this and Dr. Hofman stated he was unable to find articles relating to this theory, publication and general acceptance are not necessary preconditions to the admissibility of such evidence, simply factors to consider.

Previously this Court has stated that even if an expert's opinion is weak,

[21] 509 U.S. at 592-94.

poorly stated or ultimately wrong, as long as the witness is qualified as an expert and the opinion was based upon information reasonably relied upon by experts in the field, the testimony would be admissible.[22] In this case, the Defendant had the opportunity to cross examine Dr. Wecht to expose weaknesses in his testimony. Further, Sears presented the testimony of Dr. Hofman to refute Dr. Wecht's testimony. The jury may choose to rely upon one expert over another - in this case the jury apparently relied upon the testimony of Dr. Wecht. Dr. Wecht's testimony was properly admitted for the jury to consider.

Viewing the evidence in a light most favorable to the Plaintiffs, this Court finds that the Plaintiffs have met their burden in establishing that Mr. Midcap experienced conscious pain and suffering for an appreciable time prior to his death. Therefore, Defendant's motion for judgment as a matter is law is ***denied***. Finally, with respect to the alternative motion for a new trial, this Court finds that there is no basis for reversing the jury's verdict. It was reasonable and proper for the jury to rely upon the testimony of Dr. Wecht rather than Dr. Hofman. Thus, Defendant's motion for a new trial with respect to the survival action is ***denied***.

Wrongful Death Awards

Sears contends that the awards made to Maria, Carla, Sharon and Natalia are so large as to shock the court's conscience and as such the Court should reduce the amounts of the awards or grant a new trial. In addition, Sears argues that the Court

[22] *Conway v. Bayhealth Medical Center, Inc.,* 2001 Del. Super. LEXIS 115, *8.

erred in permitting the jury to hear certain testimony by the Plaintiff's economists.

Title 10, section 3724 of the Delaware Code creates a wrongful death action for the benefit of the spouse, parent, child and siblings of the decedent. In determining the amount of the award the jury may consider loss of pecuniary benefits, loss of support, loss of parental, marital and household services, reasonable funeral expenses and mental anguish suffered by the surviving spouse and children following the death.[23]

The standard for reducing a jury award or granting a new trial because the damages are excessive was discussed previously with respect to the survival action. It is important to note that great deference is given to jury verdicts.

Wrongful Death Verdicts for Carla, Natalia and Sharon

The jury awarded Carla $542,396.00 in total damages for her wrongful death claim. At the time of the explosion, Carla was a sophomore in high school still living at home with her parents. Her mother was out of town so Carla had spent the night at a friend's house nearby. She was awoken during the night by a loud boom and then a phone call from a friend shouting that her house was destroyed. Carla walked outside after the friend called saw ash all over the ground and cars. When she got to her neighborhood, a police officer would not let her in, but she could see her family photos and papers strewn around. The police officer informed her that her dad had been killed in the explosion. It then became Carla's responsibility,

[23] 10 Del. C. § 3724(d) (2003).

because her mother was out of town, to call her sisters and tell them what had happened. Until her sister Natalia arrived several hours later, Carla was alone in Dover.

The jury heard testimony regarding Carla's close relationship with her dad. How he had played baseball with her and taken her shopping. The day before the explosion they had worked together in the garden. In addition, the jury heard how Carla's life had changed following her father's death. When she returned to high school, the other students would talk about the explosion making her feel uncomfortable. She has sought counseling to deal with her grief from a psychiatrist in Dover and also a counselor at her university.

Defendant points to a Superior Court case in which a minor child was awarded $130,000 for her father's wrongful death as establishing the proper award. However, a major distinction between *Daniels v. Daniels* [24] and the present case is that *Daniels* involved a bench trial, not a jury trial.

A more recent case awarded over $2 million to the teenage son of the decedent. In *West v. Maxwell,* the jury awarded over $4 million in total damages, including the $2 million award to the son. Mrs. West contracted influenza which developed into pneumonia. Unfortunately her doctor failed to diagnose the pneumonia and, following a month long hospital stay during which she was placed on a respirator, she died. Her son, Chad, testified that while his mother was alive

[24] 1990 Del. Super. LEXIS 190.

he lived in a stable, loving world with his mother and stepfather. After her death, Chad was out of control. He moved in with an aunt and uncle and then with a friend's family and worked as a waiter and doing menial office work. The Court, in upholding the award, concluded that because Chad had a "troubled childhood," he needed his mother more than other children and thus, the award was justified.

While Carla's situation was not as extreme as Chad's, the award is not so large as to shock the conscience of the Court. Carla lost an extremely important member of her family and testified as to how the loss impacted her. Because the award does not seem to have been made out of prejudice, passion or corruption, and seems to fall within a reasonable range for an award of this type, Defendant's motion for remittitur or a new trial with respect to Carla's award will not be disturbed and thus is ***denied***.

Natalia and Sharon Midcap did not live at home at the time of the accident. However, they still felt the loss of their father, with whom all of the girls had been close. The jury apparently reasoned that their mental anguish over the loss was less than Carla's, probably because they no longer lived at home depending on their father every day. The jury's award of $271,198, exactly half of what the jury awarded to Carla, appears to be a reasonable and rational award. Sears' motion for remittitur or a new trial with respect to Natalia and Sharon's awards is ***denied***.

Wrongful Death Verdict for Maria

The jury awarded Maria Midcap $1,084,794 in damages resulting from the death of her husband. Sears contends that this amount is excessive and should be

reduced by the Court or a new trial should be granted. In addition, Sears argues that the jury heard "questionable" testimony from Dr. Latham and Dr. Wolf regarding pecuniary losses. The issues regarding Dr. Latham's and Dr. Wolf's testimony were already decided prior to trial. The Court precluded the Defendants from discussing the income Mrs. Midcap was receiving from Social Security and pension benefits in an attempt to impeach Dr. Latham finding they were excluded under the collateral source rule, unless the Defendants were able to establish that it fell within an exception to the rule. The Defendants were unable to do so. In addition, the Court concluded that Dr. Wolf could testify in an effort to establish the value of the losses suffered by the Midcaps. This included testimony regarding the value of household services and loss of advice, counsel and support. Expert testimony is permitted if technical or other specialized knowledge will assist the trier of fact to determine a fact in issue.[25] In this case, Dr. Wolf was permitted to testify to help the jury place an appropriate value on lost services. It was then up to the jury to accept or reject his testimony. Therefore, Defendant's motion for a new trial based upon the testimony of Dr. Wolf and Dr. Latham is ***denied***.

Finally, Sears contends that Mrs. Midcap's award was excessive as compared to other wrongful death awards. Again, Sears attempts to rely on *Daniels*, which was a decision made following a bench trial. In *West v. Maxwell*, the jury awarded over $1 million to Mr. West following his wife's death. The trial judge concluded

[25] D.R.E. 702.

that this was a reasonable award given the circumstances of the case. In this case, the jury heard testimony regarding the extreme loss suffered by Mrs. Midcap following her husband's sudden death. Mrs. Midcap moved to the United States following her marriage to Mr. Midcap. She relied upon him heavily on a daily basis. The jury heard how Mrs. Midcap was hospitalized for 3 weeks because she suffered from survivor's guilt and wanted to commit suicide. She is still undergoing psychiatric treatment and is taking medication. While attempting to deal with the loss of her husband, Mrs. Midcap also had to deal with the fact that the family home and all of their possessions were destroyed. It was entirely reasonable for the jury to make the award that it did in this case. The award seems to encompass some of the pecuniary losses as well as an award for mental anguish. The amount of the award does not shock the Court's conscience and does not appear to be against the weight of the evidence. Based upon this, Sears' motion for remittitur or in the alternative a new trial is ***denied***.

Conclusion

Based on the above, Sears' motions for remittitur or new trial concerning the wrongful death awards and the survival action are ***denied***. In addition, Sears' motion for a new trial claiming that the verdict was against the great weight of the evidence is also ***denied***. Finally, Sears' motions for judgment as a matter of law

or, in the alternative, a new trial as to the survival action are ***denied***.[26]

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File

[26] Plaintiffs filed a motion for a new trial with respect to Southern States. However, Plaintiffs stated that their motion was only to be considered if Sears' motions for new trials were granted. Because Sears' motions are denied, Plaintiffs' motion for a new trial with respect to Southern States will not be considered by the Court.