

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY MALANTONIO, et al. :  
 :  
 v. : NO. 15-6444  
 :  
 JOSEPH BOYLE, III, et al. :

**MEMORANDUM AND ORDER**

JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE

February 14, 2017

Defendant, Joseph Boyle, III, has filed a Motion in Limine to preclude Plaintiff from introducing evidence of a Loss of Earning Capacity Claim (Doc. No. 46). Defendant argues that Plaintiff is still working in the same job with the same duties and is currently earning approximately \$13,000 more now than she was at the time of the accident. Defendant argues that there is therefore no basis for the jury to conclude that Plaintiff has suffered a loss of earning capacity. In response, Plaintiff argues that the testimony will show that her work performance is showing a marked decline and that her employer is noticing. Plaintiff intends to introduce evidence from a co-worker regarding her work performance and regarding a new hire who is training to take over Plaintiff's job responsibilities. Plaintiff also intends to introduce evidence from a neurologist regarding Plaintiff's cognitive deficits and from her vocational expert who has opined that she will not maintain her current employment.

Given the evidence that Plaintiff intends to introduce at trial, this Court will deny the motion. The jury should be able to compare Plaintiff's potential to continue to earn a given amount without injury and her vocational limitations now and into the future due to her injuries. As Plaintiff argues, the fact that Plaintiff has kept her job and received an increase in her salary since the time of the accident is evidence which will be raised by Defendant regarding the weight

of the evidence, but does not affect the admissibility of evidence regarding an alleged loss of earning capacity.

An appropriate order follows.

**O R D E R**

AND NOW, this 14<sup>th</sup> day of February, 2017, upon consideration of Defendant's Motion in Limine to Preclude Plaintiff From Introducing Evidence on Loss of Earning Capacity Claim (Doc. No. 46) and Plaintiff's Response in Opposition thereto (Doc. No. 48), it is hereby ORDERED that the Motion (Doc. No. 46) is DENIED.

BY THE COURT:

*/s/Jacob P. Hart*

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JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE