

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2005*

**MERASTAR INSURANCE COMPANY,**  
Appellant,

v.

**EVELYN WEBB,**  
Appellee.

Nos. 4D04-1342 and 4D04-2501

[September 7, 2005]

SHAHOOD, J.

We affirm as to the first issue raised holding the trial court did not abuse its discretion in denying appellant's motions for mistrial and new trial based upon certain closing argument comments. Although the complained-of comments were improper, they were not so prejudicial as to mandate a mistrial or a new trial. *See Matalon v. Lee*, 847 So. 2d 1077, 1080 (Fla. 4th DCA 2003).

We hold the trial court erred in admitting into evidence and refusing to strike previously undisclosed evidence of plaintiff's prescription drug bills. *See generally 99 Broadcasting Co. v. Crider*, 493 So. 2d 462 (Fla. 4th DCA 1985) (holding that it was error to allow testimony of undisclosed witness who suggested a new theory of damages upon which jury verdict may well have been based). We remand for the trial court to grant a remittitur for the amount of the prescription drug bills.

Finally, because we are affirming the judgment in favor of Webb, except as to prescription drug bills, we also affirm the judgment taxing costs against appellant.

*Affirmed in part; Reversed in part and Remanded.*

STONE and MAY, JJ., concur.

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Consolidated appeals from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Peter D. Blanc and Susan Lubitz, Judges; L.T. Case No. 502002CA006932XXCDAB.

Marjorie Gadarian Graham of Marjorie Gadarian Graham, P.A., and Alan C. Espy, Palm Beach Gardens, for appellant.

Barbara J. Compiani and Jane Kreuzler-Walsh of Jane Kreuzler-Walsh, P.A., and Christopher M. Larmoyeux of Larmoyeux & Bone, P.A., West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***