NUMBER 13-15-00364-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

RICHARD H. FISHER, **Appellant,**

v.

KAWASAKI HEAVY INDUSTRIES, LTD., KAWASAKI MOTORS, CORP., USA, KAWASAKI MOTORS MANUFACTURING CORP., USA, **Appellees.**

On appeal from the 28th District Court of Nueces County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Justice Benavides

This is an appeal from a take-nothing judgment rendered in a products-liability jury trial. Appellant Richard Fisher challenges the take-nothing judgment rendered in favor of appellees Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corporation, U.S.A., and Kawasaki Motors Manufacturing Corporation, U.S.A. (collectively Kawasaki unless otherwise noted). By five issues, which we construe as four, Fisher asserts that the trial

court committed harmful error on four specific evidentiary rulings, or in the alternative and collectively, under the doctrine of cumulative error. We affirm.

I. BACKGROUND

On the afternoon of November 18, 2010, then fifty-seven-year-old Richard Fisher visited his ranch in Refugio with the intention to go deer hunting. Prior to the hunt, Fisher purchased two 250-pound tubs of molasses that he aimed to use to distract his cattle and horses while he hunted in his deer blind. Fisher transported the tubs in the bed of his pickup from the store where he purchased them to his ranch. Upon arriving at the ranch, Fisher sought to transfer the tubs from the bed of his pickup to the cargo bed of his 2006-model Kawasaki Mule 610 4x4 side-by-side utility vehicle (the Mule).[1] The Mule's cargo bed had a dump feature that was secured by a manual over center latch located on the passenger's side, under the Mule's bench seat. Fisher had used the Mule in the past to transport miscellaneous items on his ranch.

[1] For the benefit of the reader, we have included two images of the 2006 Kawasaki Mule 610 model at issue. The first image depicts the Mule's cargo bed in a down position, and the second image depicts the Mule's lifted cargo bed.

In preparing the transfer of the tubs from his pickup to the Mule, Fisher parked the Mule and his pickup “stern to stern” with “both tailgates down.” The record shows that the height difference between the pickup tailgate and the Mule tailgate was five inches. Fisher, who

weighed “around 220 [pounds]” at the time, then entered the cargo bed of the Mule and progressed to the back of the Mule, when the Mule’s cargo bed “flipped up” and threw Fisher to the ground. As a result of the fall, which Fisher described as “violent,” Fisher sustained a tibial plateau fracture and lateral meniscus tear on the anterior horn of his right knee. While on the ground, he first called his wife Lucia for help. Fisher told jurors that he did not call 9-1-1 because he did not have his mailbox up and was worried that emergency workers would not be able to find his ranch.

After speaking to his wife, Fisher then called his neighbor Ronald Lucich Sr. asking for help. Lucich Sr. testified that Fisher told him that the cargo bed of the Mule flipped because he did not latch it. Lucich Sr., who was at work at the time, then called his son Ronald Lucich Jr. to check on Fisher. Lucich Jr., who was age fifteen at the time of trial, testified that his father called him as he left school that afternoon and told him to check on Fisher at Fisher’s ranch. Upon arriving at Fisher’s ranch, Lucich Jr. observed the Mule and Fisher’s pickup backed up to each other, Fisher leaning up against the Mule, and a tub of molasses on the ground. Lucich Jr. then told jurors that Fisher told him “I forgot to latch the goddang thing.” Fisher denied making this statement to Lucich Jr. and told jurors that he “had no idea [the cargo bed] was unlatched” and had no reason to believe it was unlatched because he rarely used the Mule. Lucich Jr. stayed with Fisher until Lucia arrived to transport Fisher to Doctors Regional Hospital.

At the time of his injury, Fisher was employed as a licensed harbor pilot at the Port of Houston earning an annual salary of slightly more than $500,000. In order to obtain a pilot’s license such as Fisher’s, pilots must undergo a United States Coast Guard-mandated physical exam due to the physical demands of the job such as climbing rope

ladders and boarding ships as large as “super tankers.” Fisher testified that because of his injuries, however, he failed his 2011 annual physical and had his pilot’s license revoked.

Fisher subsequently sued Kawasaki for damages resulting from his injuries. In his petition, he alleged claims of strict products liability, negligence, and violations of the Texas Deceptive Trade Practices Act.

At trial, Fisher presented testimony from Andrew Gilberg, P.E. who testified that the Mule’s latching system was defective. Gilberg testified that Kawasaki failed to perform what engineers call a “failure mode effects analysis” to assess the risk of the Mule’s latching system. Specifically, Gilberg stated that the Mule’s over-center latching system as designed did not notify the user whether the latching system was engaged when the bench seat was down. Gilberg testified that the majority of other side-by-side utility vehicles on the market at the time utilized a slam latch system similar to the latches found on an automobile’s hood or door. According to Gilberg, the slam latch is a cost-effective design to alert the user if the latch is not engaged. Gilberg showed jurors videotaped testing he ran on a modified Mule containing a slam latch system rather than the over-center latch found on the Mule at issue. The modified Mule withstood various weight tests.

Fisher played the video deposition of Kawasaki corporate representative, Hideotoshi Kaku, who was also one of the engineers in charge of designing the latch system in the Mule. Kaku testified that all Kawasaki Mule models had the same over-center latch system since 1988, and Kawasaki possessed no information or reports of problems related to this particular latch system to deem it unreliable. Kaku further testified

that Kawasaki did not view the slam latch system as cost-prohibitive, but likewise did not believe that such a system was necessary.

Fisher also presented expert testimony from Robert Cunitz, Ph.D., a psychologist who specializes in human factors. Dr. Cunitz defined the study of "human factors" as taking knowledge of human behavior and learning and how it interacts with the "things of various sorts in the real world in which we find" from something as simple as sitting in a chair to how controls are set up in jet aircraft. Dr. Cunitz evaluated the Mule and testified that the Mule "looks stable" despite being unlatched, which violates consumer expectations because "it doesn't work the way you think it does." Dr. Cunitz told jurors that the best way to design the Mule to warn users that the latch was disengaged was to have the bed pop up. Dr. Cunitz opined that as designed in this case, the Mule created a tipping hazard because the latch was not obvious, it was painted black and located in a dark area, and it was "not conspicuous" for the user to view. Finally, Dr. Cunitz testified that from a human factors perspective, he did not believe that Fisher failed to use ordinary care in his interaction with the Mule on November 18, 2010.

Next, Fisher presented evidence from Andrew Hammond, who is an expert in ship pilot licenses. According to Hammond, as a result of the injuries that Fisher sustained in this case, he would be unable to obtain the necessary credentials from the United States Coast Guard to maintain his pilot's license. Occupational expert William L. Quintanilla testified that based on Fisher's past employment history, current physical condition, and lack of a pilot's license, Fisher is employable "in administrative sedentary jobs" in the water transportation industry with annual wages ranging from $47,788 to $59,840. Lastly, economist Thomas Mayor, Ph.D. testified about Fisher's economic outlook as a result of

his injury, after reviewing Fisher's medical and occupational history. Dr. Mayor testified that had Fisher not been injured and maintained his harbor pilot position at his last net annual salary of $564,997, Fisher would have earned $2,504,632 from the date of his injury until the date of trial. Furthermore, Dr. Mayor opined that if Fisher had retired at: (1) age 63, he would have lost future earnings of $952,323; (2) age 65, he would have lost future earnings of $2,075,373; and (3) age 68, which is the mandatory retirement age for pilots, he would have lost future earnings of $3,626,009.

After Fisher rested, Kawasaki presented testimony from two relevant expert witnesses. The first was John D. Olivas, Ph.D, an engineer and former NASA astronaut. Dr. Olivas testified that he was familiar with failure mode effects analysis as testified to by Gilberg, but did not believe that it was necessary in this case because such an analysis was "not applicable" for such a "small . . . single component" such as a latch. Dr. Olivas opined that the Mule's over-center latch "is visible to any operator" and "[the] ability to access it and manipulate it is easy." Dr. Olivas further testified that in his opinion, there was no failure with the latch, and it was designed to operate without having to raise the bench seat of the Mule. Dr. Olivas offered an opinion that Fisher was negligent in that he knew about the latch and how to use it but failed to operate it prior to climbing into the cargo bed.

Lastly, engineer Kevin Breen testified on behalf of Kawasaki. Breen testified that he was the former chair of the Society of Automotive Engineers' Special Purpose Vehicle Committee, which developed standards and technical provisions for vehicles such as the Mule involved in this case. According to Breen, "more than 66,000" Mules had been sold in the United States prior to 2006 and after searching records maintained by Kawasaki as

well as the Consumer Product Safety Commission, he was unable to find any other record of incidents or injuries such as Fisher's. Breen opined that he did not believe that the design of the Mule's latching system caused or contributed to Fisher's injury. Breen testified that the latching mechanism is "a mechanism that works, [and] . . . it still . . . works properly today."

After an eight-day trial, the jury returned a verdict finding Kawasaki not liable for any design defects of the Mule or any defects in the warnings or instructions on the Mule. In accordance with the verdict, the trial court signed a take-nothing judgment in Kawasaki's favor. Fisher filed a motion for new trial and asserted that: (1) the trial court committed error by admitting certain testimony from Breen; (2) the trial court committed error by admitting evidence regarding Fisher's net worth; (3) the trial court committed error by admitting testimony from Olivas regarding Fisher's negligence; and (4) the evidence was factually insufficient to support the verdict. After holding a hearing, the trial court denied Fisher's motion for new trial, and this appeal followed.

II. EVIDENTIARY RULINGS

By his first four issues, which we construe as three, Fisher asserts that the trial court committed reversible error by admitting various pieces of evidence at trial.

A. Standard of Review

Evidentiary rulings are committed to the trial court's sound discretion. *Owens–Coming Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998). We will uphold a trial court's evidentiary ruling if there is any legitimate basis for the ruling. *Id.* Even if the evidentiary ruling is erroneous, we will not reverse unless the error probably caused the rendition of an improper judgment. *See* TEX. R. APP. P. 44.1.

B. Discussion

1. Kevin Breen's Testimony and Chart

By his first two issues, which we construe as one, Fisher asserts that the trial court committed harmful error by (1) allowing Breen to testify that 99.99 percent of Kawasaki Mule latches were used without reported incident; and (2) admitting a chart illustrating Breen's 99.99 percent testimony.

At trial, Breen testified that he reviewed sales data figures of all Mules with the over-center latch mechanism involved in this case. Breen concluded that "more than 66,000" of these Mules were sold in the United States prior to 2006. Furthermore, Breen testified that he reviewed information and records maintained by and provided to him by Kawasaki as well as data from 1998 to 2006 from the Consumer Product Safety Commission for "events substantially similar to [Fisher's]." Breen told jurors that based on his research, of the 66,000 Mules with the over-center latch sold in the United States prior to 2006, Fisher's incident was the only known case involving an alleged latch defect, and the trial court admitted a pie chart reflecting those findings.

At trial, Fisher objected to the admissibility of Breen's 99.99-percent testimony on the following grounds: (1) "improper foundation"; (2) inadmissible under rules of evidence 401 and 403; (3) Kawasaki failed to timely disclose certain opinions; and (4) the opinions were hearsay. On appeal, Fisher complains that Breen's testimony was inadmissible because it was: (a) hearsay; (b) without foundation; (c) untimely disclosed; and (d) inadmissible under rule of evidence 403. We will address each admissibility ground in turn.

a. Hearsay

Fisher first argues that Breen's 99.99-percent opinion testimony was inadmissible hearsay because it relied upon (1) Kawasaki's internal data as told to Breen by an unnamed Kawasaki employee; and (2) his own search results from the Consumer Products Safety Commission. Rule of evidence 703 provides that experts may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. TEX. R. EVID. 703. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. *Id.*

The data Breen relied upon to form his "99.99-percent" opinion was based on two different sources: (1) internal Kawasaki data and files; and (2) his own search results from the Consumer Products Safety Commission database. First, an expert may rely upon a manufacturer's records to evaluate whether the product in question is defective. *See Schronk v. City of Burleson*, 387 S.W.3d 692, 706 (Tex. App.—Waco 2009, pet. denied). While it is true that consumer-complaint files made to manufacturers are generally hearsay within hearsay and require exceptions to the hearsay rule in order to be admitted, *see Nissan Motor Co. Ltd. v. Armstrong*, 145 S.W.3d 131, 140 (Tex. 2004), the issue in this case is not the admissibility of these records themselves but rather Breen's opinions as they relate to his interpretation of these records, which are not inadmissible under rule of evidence 703. *See Welder v. Welder*, 794 S.W.2d 420, 430 (Tex. App.—Corpus Christi 1990, no writ) (holding that even if summaries and records were inadmissible hearsay, an expert may testify under rule of evidence 703 if the facts or data relied upon by the expert are of the type reasonably relied upon by experts in the particular field in forming opinions

or inferences upon the subject). Second, Breen testified that his personal search of the Consumer Products Safety Commission database utilizing various search criteria yielded no results. Rule 703 allows an expert to base his opinion on facts or data that he "personally observed." TEX. R. EVID. 703. We disagree with Fisher that this testimony relied upon hearsay or even served "as a conduit" for hearsay because these findings were based upon Breen's own searches and observations of the Consumer Products Safety Commission database. Accordingly, we conclude that the trial court did not abuse its discretion by overruling Fisher's hearsay objection.

b. Foundation

Next, Fisher argues that Breen's opinion "lacked a reliable foundation" because it was based upon various unreliable facts, including: (1) Kawasaki's complaint database; (2) Kawasaki sold 66,000 units with a similar latch; and (3) the Consumer Product Safety Commission database revealed no similar incidents. Kawasaki responds by arguing that Fisher waived any foundational complaints. We disagree and find that based upon the record, Fisher lodged foundational objections and obtained the necessary rulings regarding Breen's 99.99-percent opinion at trial to preserve these objections for our review. *See* TEX. R. APP. P. 33.1(a).

Turning to the merits of Fisher's argument, we also disagree that Breen's opinions lacked foundation. Rule of evidence 705(c) states: "An expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion." TEX. R. EVID. 705(c). First, Fisher asserts that Kawasaki's complaint database information was unreliable because Breen did not personally search the Kawasaki database and that such database evidence conflicted with Kawasaki's corporate representative Hideotoshi Kaku's

testimony that Kawasaki had "no way of knowing how many times" the beds of Mules flipped up because they were unlatched. While it is true that Breen did not personally search the Kawasaki files, he testified that Kawasaki provided him with records involving warranty claims, customer complaints to Kawasaki directly, complaints to Kawasaki dealers, and records of lawsuits filed against Kawasaki. We have already held that this testimony was not inadmissible hearsay. Furthermore, we conclude that these records do not conflict with Kaku's testimony because the record shows that these records concern files maintained by Kawasaki Motors Manufacturing Corporation, which manufactures the Mules, as well as customers of Kawasaki Motor Company, which distributes the Mules in the United States and handles customer service through a toll-free telephone number. Kaku testified that he was the corporate representative of Kawasaki Heavy Industries, which designed the Mule's latch system. Lastly, there is no conflict between Kaku's testimony and Breen's testimony because Kaku's testimony concerned how many times the Mule beds had flipped versus Breen's testimony of how many complaints were made.

Second, Fisher argues that Breen's 66,000-units-sold figure was unreliable because it encompassed other Mule models that were not the same model as Fisher's Mule 610 4x4 model. Breen testified that he reached the 66,000-units-sold figure by first examining the parts fiche, or parts diagram, of the Mule 610 4x4's latch system and then:

> I looked for all the models that had the same part number for the latch and I also looked to where the latch was positioned to make sure the latch was positioned—positioned on the bed—in the front portion of the bed as opposed to on the side or anywhere else.

Therefore, by utilizing this method, Breen determined that 66,000 Mules were sold between 1998 and 2006 with the same latch system as Fisher's Mule. We conclude that the trial court acted within its discretion to hold that Breen provided a sufficient basis to

explain his method in reaching the 66,000-units-sold figure and did not lack foundation. *See id.*

Third, Fisher argues that Breen's opinions of his search of the Consumer Product Safety Commission database was based upon an unreliable foundation. We, again, disagree. Breen testified that he searched the Consumer Product Safety Commission database by looking for "any similar instances of a bed tilt, tip, or rotation where someone was injured involving a side-by-side vehicle." Next, Breen stated that after not finding anything under his initial search, he searched for incidents involving "Kawasaki 610s" and again found no results in the database. Based on this record, we hold that the trial court acted within its discretion to find that Breen provided a sufficient basis for his testimony regarding his search of the Consumer Product Safety Commission database. *See id.* Accordingly, we conclude that the trial court did not abuse its discretion in overruling Fisher's improper-foundation objections.

c. Untimely Disclosure

Next, Fisher argues that the trial court committed reversible error by allowing Breen to testify that his 99.99-percent opinion was based upon the Consumer Product Safety Commission database search because it was untimely disclosed. Kawasaki argues that Fisher failed to preserve error on this ground. As a prerequisite to presenting a complaint for appellate review, the record must show that a complaint was made to the trial court, and the trial court must rule on the complaint. *See* TEX. R. APP. P. 33.1(a). Here, Fisher objected to Breen's testimony on untimely disclosure grounds prior to Breen testifying. After a lengthy exchange of arguments by both parties out of the presence of the jury regarding Breen's anticipated testimony, the trial court ended the arguments by asking the

parties: “Y’all want to close today? Y’all want to close today?” Both parties replied in the affirmative, and the trial court then remarked that Kawasaki had a “right to respond” to Fisher’s expert. Even assuming that such error was preserved, we do not find that the untimely testimony was harmful. *See id.* at R. 44.1(a). The record shows that Fisher’s counsel skillfully cross-examined Breen at length about his search of the Consumer Product Safety Commission database and methods he used to rely on this data. During cross-examination, the reliability and accuracy of usining the Consumer Product Safety Commission database was put into question based upon how information is being reported to the agency. Accordingly, even assuming we conclude that Fisher’s untimely-disclosed objection to Breen’s testimony on this ground was preserved, we cannot conclude that admitting the testimony over this particular objection probably caused the rendition of of an improper judgment. *See id*.

d. Rule 403

Finally, Fisher argues that the trial court abused its discretion by admitting Breen’s testimony over his Rule 403 objection. Again, we disagree. Rule of evidence 403 states that the trial court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” TEX. R. EVID. 403. Fisher argues that Breen’s testimony should have been excluded under rule 403 because he “had no ability to cross-examine the declarants of Breen’s hearsay statements.” However, we have already held that Breen’s testimony was not inadmissible hearsay. Moreover, as noted previously, Fisher’s counsel proficiently cross-examined Breen at length about his opinions, what he based them on, and how he formulated them.

Accordingly, we conclude that the trial court did not abuse its discretion in admitting Breen's testimony over Fisher's rule 403 objection.

e. Breen's Pie Chart

By his second issue, Fisher asserts that the trial court committed harmful error by admitting an exhibit of a pie chart illustrating and summarizing Breen's 99.99-percent opinion. Fisher argues that the chart was inadmissible for the same reasons that Breen's testimony was inadmissible. We disagree. The chart simply summarizes Breen's opinion and presents it in a graphical format. Thus, the trial court did not abuse its discretion in admitting the exhibit.

f. Summary

Having concluded that the trial court did not abuse its discretion by (1) allowing Breen to testify that 99.99 percent of Kawasaki Mule latches were used without reported incident; and (2) admitting a chart illustrating Breen's 99.99 percent testimony, we overrule Fisher's first and second issues.

2. Dr. Olivas's Testimony

By his third issue, Fisher argues that the trial court abused its discretion by admitting testimony from Kawasaki's expert Olivas about a matter "within the common knowledge of the jury." Olivas testified that he believed that Fisher was the sole cause of this accident for failing to check the latch prior to climbing into the Mule's cargo bed. Kawasaki argues that the trial court did not abuse its discretion by admitting Olivas's testimony because it was necessary to rebut testimony about Fisher's actions offered by Fisher's human factors expert, Robert Cunitz. We agree.

Cunitz testified that he did not think Fisher "failed to use ordinary care at all" in this case. Olivas offered the opposite opinion in rebuttal. This Court has held that "a party on appeal may not object to the admission of incompetent evidence that he offered or brought out that related to an issue which he first injected into the case." *Pojar v. Cifre*, 199 S.W.3d 317, 336–37 (Tex. App.—Corpus Christi 2006, pet. denied) (citing *McInnes v. Yamaha Motor Corp.*, 673 S.W.2d 185, 187–88 (Tex. 1984)). In overruling Fisher's objection to Olivas's testimony, the trial court stated that it believed "the door was opened" by Fisher's questioning of Cunitz's opinions regarding Fisher's negligence and Cunitz's opinion about whether Fisher was negligent in this case. We agree and conclude that the trial court did not abuse its discretion by allowing Olivas to testify. We overrule Fisher's third issue.

3. Fisher's Net Worth

By his fourth issue, Fisher argues that the trial court committed harmful error by admitting a balance sheet which detailed Fisher's net worth. Specifically, the balance sheet balanced Fisher's "liquid assets," "investment assets," and "personal assets" against his short-term and long-term obligations. The balance sheet showed Fisher with a current net worth of $1,549,392. Texas courts "historically have been extremely cautious in admitting evidence of a party's wealth" because it "has a very real potential for prejudicing the jury's determination of other disputed issues" in a case. *Reliance Steel & Aluminum Co. v. Sevcik*, 267 S.W.3d 867, 870 (Tex. 2008).

In responding to Fisher's objections to this exhibit, Kawasaki argued that the balance sheet was admissible in the following manner:

> Usually, it's the defendant arguing about net worth but we think it's highly relevant to get into his financial background, his financial earnings and that goes to the heart of the matter because one of the big contested issues in this case is going to be with respect to damages whether or not Mr. Fisher intended and planned to retire at the end of 62 or 63.

We find Kawasaki's arguments unpersuasive for three reasons. First, the balance sheet does not express anything related to Fisher's retirement age or plans nor does it mention Fisher's earning capacity. Simply put, this balance sheet is a snapshot of Fisher's wealth. Secondly, this evidence was unnecessary in light of Fisher's stipulation that "he would have had enough money to retire when he was 62." Third, even if Kawasaki relied on any information provided in the balance sheet, Kawasaki had every opportunity to ask Fisher about it during cross examination without offering the balance sheet into evidence. Accordingly, we hold that the trial court abused its discretion in admitting the balance sheet.

Having found error, we now turn to whether it was harmful. *See* TEX. R. APP. P. 44.1. When undertaking this review, we must evaluate the entire case from voir dire to closing argument, considering the "state of the evidence, the strength and weakness of the case, and the verdict." *Reliance Steel*, 267 S.W.3d at 871.

We start first with the judgment. Fisher obtained an adverse, take-nothing judgment in Kawasaki's favor, with the jurors finding no liability on Kawasaki's part. While erroneously-admitted evidence that is crucial to a key issue in a case is likely harmful, admission or exclusion is likely harmless if the evidence was cumulative, or if the rest of the evidence was so one-sided that the error likely made no difference. *See id.* at 873 (citing *Alvarado v. Farah Mfg. Co., Inc.*, 830 S.W.2d 911, 917; *State Farm Lloyds v. Nicolau*, 951 S.W.2d 444, 452 (Tex. 1997); *Tex. Dep't of Human Servs. v. White*, 817

S.W.2d 62, 63 (Tex. 1991)). As discussed above, evidence of a party's wealth has a "very real potential" of prejudicing a jury, and "the more impressive the wealth, the more likely it is to make an impression." *See id.* at 870–73. Here, jurors heard evidence of Fisher's impressive wealth throughout the trial, including that he: (1) earned more than $500,000 annually; (2) owned a "hobby ranch"; (3) had a home in Rockport; and (4) owned a condo in Webster, Texas. Additionally, Fisher's economic outlook expert Thomas Mayor testified about Fisher's lost past earnings of $2,504,632 and lost future earnings ranging from $952,323 to $3,626,009, depending on when he retired. Fisher argues that these facts do not render the error in this case harmless because if that were the case "it would be harmless error to admit the net worth of any well-known corporate defendant." While we appreciate Fisher's argument, in the context of this case, Fisher's wealth and earning capacity was well-known by the jurors even without the balance sheet. Thus, because of what the jurors knew from the evidence, Fisher's net worth of approximately $1.5 million was likely cumulative and not an amount that likely turned the jurors' heads. *See id.*

Furthermore, this case ended with the jurors finding no liability, and thus, they did not reach the question of damages. Had the jurors in this case found Kawasaki liable and awarded or failed to award damages to Fisher in this case, we would perhaps be dealing with an entirely different harm analysis. However, because the central issue in this case appeared to turn solely on the issue of liability, admission of the balance sheet probably did not cause the rendition of an improper judgment. *See* TEX. R. APP. P. 44.1.

We overrule Fisher's fourth issue.

IV. CUMULATIVE ERROR

By his fifth issue, Fisher argues that even if none of the individual errors were harmful in this case, the doctrine of cumulative error requires reversal.

Texas law recognizes that multiple errors, even if considered harmless taken separately, may result in reversal and remand for a new trial if the cumulative effect of such errors is harmful. *Brown v. Hopkins*, 921 S.W.2d 306, 319 (Tex. App.—Corpus Christi 1996, no writ). Because we found no errors with regard to Fisher's first three issues, and found harmless error under Fisher's fourth issue, we need not undertake a cumulative-error analysis in this case. *See* TEX. R. APP. P. 47.1.

Fisher's final issue is overruled.

V. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
29th day of June, 2017.