

For the reasons set forth below, I will deny both motions.

I. BACKGROUND⁴

At the time of the accident, plaintiff Anthony Dignetti was employed as a railroad conductor for Norfolk. Early in the morning, on April 22, 2003, Dignetti was moving empty railroad cars on the Middlebrook Railroad siding, in a yard owned by defendant Weyerhaeuser. The siding tracks are located in an area behind the main tracks. While walking along the siding tracks, Dignetti tripped and fell, injuring his left knee, his lower back, and his left elbow. At trial, Dignetti testified that he tripped over “what felt like a chunk of concrete or a piece of wood.” (Trial Tr., Oct. 19, 2004 at 12). Dignetti testified that the area was littered with broken concrete, pieces of wood, and other debris that had been used as dunnage⁵ to keep freight secure while in transit. (*Id.* at 91.) Dignetti also testified that the area was poorly lit and it was difficult to see in the early morning hours. (*Id.* at 4, 67, 74.) Dignetti and two co-workers at Norfolk testified that they made numerous complaints to Weyerhaeuser about these conditions. (*Id.* at 92–93; Trial Tr., Oct. 18 at 31–32; Trial Tr., at Oct. 20 at 9.)

Dignetti filed suit against Norfolk under the FELA on October 23, 2003. On January 13, 2004, Norfolk filed a third-party complaint against Weyerhaeuser for indemnification or contribution. Then, on July 12, 2004, Dignetti amended his complaint to include a claim against

⁴Following a jury verdict, a court cannot substitute its view of the evidence for that of the jury. Accordingly, I must view all evidence in the light most favorable to Dignetti, the prevailing party at trial. *See Keith v. Truck Stops Corp.*, 909 F.2d 743, 745 (3d Cir. 1990).

⁵*Webster’s Third New International Dictionary* defines dunnage as “temporary blocking or bracing installed by the shipper in the hold of a ship, in a railroad car, or in a truck to protect freight during shipment.” 702.

Weyerhaeuser for negligence under New Jersey common law.

The trial began on October 18, 2004. Prior to the start of testimony, Dignetti requested to treat his first witness, a Norfolk employee, as an adverse witness. Weyerhaeuser objected because it claimed that Dignetti and Norfolk were “essentially trying [the] case together.” (Trial Tr., Oct. 18, 2004 at 2.) After a sidebar discussion, the court overruled the objection and permitted Dignetti to use leading questions to examine Norfolk employees. (*Id.* at 4.) The next day, the court permitted Norfolk to treat Dignetti as an adverse witness. (Trial Tr., Oct. 19, 2004 at 40.) The following day, Dignetti and Norfolk announced that they had settled their claims. (Trial Tr., Oct. 20, 2004 at 63.)

On October 22, 2004, the jury returned a verdict. It found that Weyerhaeuser and Dignetti were causally negligent, that 80% was attributable to Weyerhaeuser and 20% to Dignetti, and that Dignetti suffered damages of \$719,000.⁶ The court molded the verdict and entered a judgment in favor of Dignetti in the amount of \$575,200.

II. WEYERHAEUSER’S MOTION FOR JUDGMENT AS A MATTER OF LAW

A. Standard of Review

Federal Rule of Civil Procedure 50(a)(1) provides that “[i]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and grant a motion for judgment as a matter of law” When deciding a Rule 50 motion after a jury verdict, a court “must view the evidence in the light most favorable to the non-

⁶The jury awarded no damages to Dignetti’s wife, Mary Dignetti, for loss of consortium.

moving party, and determine whether the record contains the ‘minimum quantum of evidence from which a jury might reasonably afford relief.’” *Buczek v. Cont’l Cas. Ins. Co.*, 378 F.3d 284, 288 (3d Cir. 2004) (citations omitted).

B. Notice

To prove negligence, a plaintiff must establish that the “defendant breached a duty of reasonable care, which constituted a proximate cause of the plaintiff’s injuries.” *Brown v. Raquet Club of Bricktown*, 471 A.2d 25, 29 (N.J. 1984).⁷ In New Jersey, landowners have a duty “to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe.” *Nisivoccia v. Glass Gardens, Inc.*, 818 A.2d 314, 316 (N.J. 2003) (citation omitted). “Ordinarily an injured plaintiff asserting a breach of that duty must prove, as an element of the cause of action, that the defendant had actual or constructive knowledge of the dangerous condition that caused the accident.” *Id.* (citation omitted). Weyerhaeuser argues that Dignetti failed to prove that Weyerhaeuser breached any duty because there is no evidence that Weyerhaeuser had notice of the conditions that caused Dignetti’s injuries.

Dignetti adduced ample evidence at trial from which a reasonable jury could infer that Weyerhaeuser had actual notice of the conditions that caused the accident. Dignetti testified that the area where he fell had been littered with “chunks of concrete,” “pieces of wood,” and other “debris” for “years.” (Trail Tr. Oct. 19, 2004 at 91–93.) He called these conditions “a constant problem” and testified that he reported these conditions to his supervisors at Norfolk and to

⁷The parties agree that New Jersey law applies. (See Br. in Supp. of Def.’s Renewed Mot. J. Matter of Law at 5; Pl.’s Supplemental Br. in Opp. to Def.’s Post Trial Motions at 14.)

Weyerhaeuser employees. (*Id.* at 6–7, 92–93.)

Additionally, a Norfolk employee testified that prior to the accident, Dignetti complained to him about loose debris in walking areas near the tracks and he communicated these complaints to Weyerhaeuser. (Trial Tr., Oct. 20, 2004 at 9.) The Norfolk terminal superintendent testified that he met with Weyerhaeuser personnel about the dangerous conditions in the Bridgewater yard and that they cleaned it up “to a great extent,” although “on occasion” he would have to call Weyerhaeuser about an additional “problem or issue.” (Trial Tr., Oct. 18, 2004 at 31, 32, 35.)

Weyerhaeuser’s operations supervisor testified that “from time to time garbage, dunnage, [and] debris . . . was deposited here and there in [the] freight yard.” (Trial Tr., Oct. 20, 2004 at 47.) He also testified that there had been no lighting in the area where Dignetti was injured for at least twelve years. (*Id.* at 29, 38.) Light receptacles were affixed to the walls of the building, but no bulbs had been placed in the receptacles for many years. All of this evidence suggests that Weyerhaeuser had actual notice of the conditions that caused Dignetti’s injury.

Weyerhaeuser alleges that Dignetti failed to prove that it was on notice of the specific debris that caused Dignetti’s injury because none of these complaints were made near the time of the accident and because Weyerhaeuser responded promptly to the complaints.⁸ However, because the accumulation of debris was a predictable and repetitive condition, Dignetti need not

⁸Weyerhaeuser also contends that it never received complaints about the specific area where the accident occurred. This argument has no merit. Dignetti testified that he complained to Weyerhaeuser about debris by the siding tracks. (Trial Tr., Oct. 19, 2004 at 5–6.) In addition, Norfolk’s terminal superintendent testified that he met with Weyerhaeuser about the dangerous conditions in the yard in general. (Trial Tr., Oct. 18, 2004 at 31, 32, 35.) Moreover, Weyerhaeuser’s operations supervisor testified that he was aware that there had been no lighting in this specific area for twelve years. (Trial Tr., Oct. 20, 2004 at *Id.* at 29, 38.) This evidence was sufficient for a reasonable jury to find that Weyerhaeuser had notice of the dangerous conditions in the specific area where Dignetti fell.

prove that Weyerhaeuser had notice of the specific debris that caused Dignetti's injury. *See Ruiz v. Toys "R" Us, Inc.*, 636 A.2d 117, 121 (N.J. Super. App. Div. 1994) ("It was a misstatement of law to require actual or constructive notice of the *specific* water spot, as Toys "R" Us was well aware that the roof leaked water onto the store's floor when it rained.") (emphasis in original); *see also Bozza v. Vornado, Inc.*, 200 A.2d 777, 780 (N.J. 1964) ("[W]hen plaintiff has shown that the circumstances were such as to create the reasonable probability that the dangerous condition would occur, he need not also prove actual or constructive notice of the specific condition.") The testimony at trial suggests that the debris in the area where Dignetti fell was a perpetual condition left by passing trains. (*See* Trial Tr., Oct. 19, 2004 at 6–7, 92–93; Trial Tr., Oct. 20, 2004 at 47.) After receiving notice of the general condition, Weyerhaeuser had a duty to keep the ground clear of debris, even after responding to the initial complaints. *See Ruiz*, 636 A.2d at 121.

C. Causation

Weyerhaeuser also contends that there is no evidentiary basis for a reasonable jury to conclude that Weyerhaeuser's negligence caused Dignetti's injuries. Weyerhaeuser observes that in Dignetti's deposition and at trial Dignetti admitted that did not see the specific piece of debris that caused his injuries. (Ex. A to Def.'s Renewed Mot. J. Matter of Law at 71–72; Trial Tr., Oct. 19, 2004 at 19–25.) Nonetheless, at trial Dignetti also testified that he "tripped on what felt like a chunk of concrete or a piece of wood," that he observed chunks of concrete and pieces of wood in the area immediately after his fall, and that he knew from his experience that such debris was in the area. (Trial Tr., Oct. 19, 2004 at 11–12, 76–77, 91.) Additionally, Dignetti testified that the area was poorly lit and it was difficult to see in the early morning hours. (*Id.* at 4, 67,

74.) The accident occurred at 4:30 a.m. and it is uncontested that the light receptacles affixed to the wall of the Weyerhaeuser building had not had light bulbs in them for years.

Plaintiffs may rely on circumstantial evidence such as this to prove causation. *See Ocasio v. Amtrak*, 690 A.2d 682, 685 (N.J. Super. Ct. App. Div. 1997) (“We also conclude that plaintiffs presented sufficient circumstantial evidence of the existence of a proximate causal relationship between Amtrak’s negligence and Ocasio’s accident to warrant the submission of this issue to the jury.”); *see also Luben v. Atlantic City Showboat, Inc.* 85 Fed. Appx. 842, 844 (3d Cir. Jan. 14, 2004) (non-precedential opinion) (“There is no rule of law or legal authority to which Showboat points or that we can locate which requires causation to be proved by direct evidence. Circumstantial evidence will suffice.”) (applying New Jersey law). Thus, this testimony is sufficient for a reasonable jury to conclude that debris that Weyerhaeuser failed to clean up and lighting that Weyerhaeuser failed to provide caused Dignetti’s injuries.

Weyerhaeuser also argues that Dignetti’s deposition testimony is inconsistent with his trial testimony because in his deposition he testified that did not know “exactly” whether he tripped over “crumbled concrete or not” and at trial he testified that he “knew” what he tripped over because “it felt like . . . a chunk of concrete or a piece of wood.” (Ex. A to Def.’s Renewed Mot. J. Matter of Law at 71–72; Trial Tr., Oct. 19, 2004 at 76.) This testimony does not actually conflict because Dignetti never claimed that he specifically tripped over “crumbled concrete.” Instead, Dignetti testified that he tripped over “a chunk of concrete *or* a piece of wood.” (Trial Tr., Oct. 19, 2004 at 76–77.) (emphasis added). Moreover, even if I determined that Dignetti’s testimony conflicts, this would not entitle Weyerhaeuser to judgment as a matter because “[i]t is settled law that when a witness gives contradictory testimony it is the function of the jury, and

not of the court, to resolve the conflict.” *O’Neill v. Reading Co.*, 306 F.2d 204, 205 (3d Cir. 1962) (citation omitted).

Because I conclude that the record contains more than “the minimum quantum of evidence from which a jury might reasonably afford relief,” I will deny Weyerhaeuser’s renewed motion for judgment as a matter of law. *Buczek*, 378 F.3d at 288.

III. WEYERHAEUSER’S MOTION FOR A NEW TRIAL

“A district court . . . may grant a new trial if required to prevent injustice or to correct a verdict that was against the weight of the evidence.” *American Bearing Co. v. Litton Industries, Inc.*, 729 F.2d 943, 948 (3d Cir. 1984) (citation omitted). A court may grant a new trial even if judgment as a matter of law is inappropriate. *See id.* at 948 n.11. This decision is left almost entirely to the discretion of the trial court. *Id.* (citation omitted).

Weyerhaeuser contends that it is entitled to a new trial because Norfolk was permitted to use leading questions to examine Dignetti even though the parties were allegedly not adverse. (Mem. in Supp. of Def.’s Mot. for a New Trial at 1–2.) Weyerhaeuser alleges that Dignetti and Norfolk had agreed to settle the case before trial, but Norfolk stayed in the case in an attempt to maximize Dignetti’s damages. (*Id.*) Under Federal Rule of Evidence 611(c), “[o]rdinarily leading questions should be permitted on cross.” However, the Advisory Committee Notes provide that “the purpose of the qualification ‘ordinarily’ is to furnish a basis for denying the use of leading questions when the cross-examination is cross-examination in form only and not in fact, as for example the ‘cross-examination’ . . . of an insured defendant who proves to be friendly to the plaintiff.”

There is no evidence to support Weyerhaeuser's allegations. Weyerhaeuser has failed to show that Norfolk and Dignetti agreed to settle prior to trial. Additionally, Weyerhaeuser fails to cite any testimony which suggests that Norfolk was trying to maximize Dignetti's damages. Surely, Norfolk's attorneys elicited testimony that was damaging to Weyerhaeuser. Nonetheless, this is not surprising because Norfolk had a cross-claim for indemnity pending against Weyerhaeuser at the time. Hence, Weyerhaeuser has failed to set forth any concrete evidence to suggest that Dignetti and Norfolk are analogous to the hypothetical insured defendant and plaintiff cited in the Advisory Committee Notes.

Additionally, even if I found that Dignetti and Norfolk were "friendly," Norfolk's cross examination of Dignetti was not unduly prejudicial to Weyerhaeuser. Under Federal Rule of Civil Procedure 61, "[n]o error in . . . the admission . . . of evidence . . . is ground for granting a new trial or for setting aside a verdict . . . unless refusal to take such action appears to the court inconsistent with substantial justice." The only example of prejudicial testimony that Weyerhaeuser provides is the following exchange between Norfolk's attorney and Dignetti:

"Q: And based on your knee, the way it is now, do you think you could apply brakes on a car?"

A: Yeah, right. And you know, make the air hose -attach the air hoses."

Q: Would you do both of those-

A: You have to crouch down in order to do that, you know. And then you have to bend your knees entirely in order to do that.

Q: And can you do that with your knee the way it is now?

A: No, I cannot.

Q: Okay, so when the railroad said you couldn't work as a conductor, it wasn't a surprise to you, was it?

A: No.

Q: Okay. And the railroad did try to find you a job somewhere else in the company, but unfortunately, when you took the test, you didn't test out for any jobs that were available, is that fair to say?

A: Well, you know, I struggled in school."

(Trial Tr., Oct. 19 at 44–45.)

Before Norfolk’s cross examination, on direct examination, Dignetti testified to these same facts. Dignetti testified that he “couldn’t return back as a conductor” and he explained that after a personnel evaluation, Norfolk “told [him] that [he didn’t] qualify for alternative jobs on the railroad.” (*Id.* at 31.) Hence, Norfolk’s cross examination did not prejudice Weyerhaeuser in any way.

Further, after the court overruled Weyerhaeuser’s initial objection on the first day of trial and permitted Dignetti to use leading questions to examine a Norfolk employee, the court cautioned Dignetti and Norfolk that “[i]f it gets too egregious, [Weyerhaeuser] can object to the question and revisit it then.” (Trial Tr., Oct. 18, 2004 at 4.) Throughout the trial, Weyerhaeuser objected when Norfolk used leading questions to examine Dignetti and to examine one of its own employees, who testified in Dignetti’s case-in-chief. (*See* Trial Tr., Oct. 19, 2004 at 95, 96, 105; Trial Tr., Oct. 20, 2004 at 14, 15, 16, 17, 18.) The court sustained five of these objections and overruled three of them, depending on the nature of the questions and the evidence counsel sought to elicit. Because the court gave Weyerhaeuser an opportunity to make further objections, and because the court sustained some of these objections, Norfolk’s use of leading questions was not “inconsistent with substantial justice.” Fed. R. Civ. P. 61. Hence, I will deny Weyerhaeuser’s motion for a new trial.⁹

⁹Further, when the settlement was reached and reported to the court on the third day of trial, Weyerhaeuser made no objection and did not request a mistrial or that the court strike the allegedly harmful cross-examination. (*See* Trial Tr., Oct. 20, 2004 at 63–68.)

IV. CONCLUSION

For the above reasons, I will deny Weyerhaeuser's renewed motion for judgment as a matter of law, or alternatively for a new trial. An appropriate order follows.

