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

MICHAEL KERZNER	:	
	:	
v.	:	
	:	**CIVIL ACTION**
GLOBAL UPHOLSTERY CO., LTD.	:	
	:	**NO. 95-1209**
v.	:	
	:	
FAULTLESS DOERNER MANUFACTURING CO.	:	

M E M O R A N D U M

WALDMAN, J. **November 19, 1997**

This is a product liability action. Plaintiff alleged that he was injured when a bracket in an office chair on which he was seated ruptured causing him to fall to the floor. Defendants respectively manufactured the bracket and assembled and distributed the chair. They conceded that this accident occurred and that the bracket and thus the chair were defective. The jury awarded plaintiff $172,000 for past lost earnings and $175,000 for past and future medical expenses. The jury did not award any damages for future lost earnings or for pain and suffering.[1]

Presently before the court is plaintiff's motion for a new trial. Plaintiff contends that the award of full medical expenses, which included expenditures for pain medication and an inherently painful epidural spinal injection treatment, is inconsistent with the failure to award damages for pain and

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1. Elements of damages were segregated to minimize the potential for conflict with lienholders should plaintiff receive a verdict.

suffering.[2] Plaintiff also contends that the jury's failure to award an amount for future lost earnings "is inadequate and contrary to the weight of evidence."

A court may grant a new trial where the verdict was against the weight of the evidence and the failure to do so would result in manifest injustice. Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1352-53 (3d Cir. 1991); Johnson v. Goldstein, 864 F. Supp. 490, 492 (E.D. Pa. 1994), aff'd, 66 F.3d 311 (3d Cir. 1995).[3] A new trial should not be granted on this basis, however, unless the jury's verdict shocks the conscience or would result in a "miscarriage of justice." Delli Santi v. CNA Ins. Companies, 88 F.3d 192, 201 (3d Cir. 1996); Williamson, 926 F.2d at 1352. A court should be particularly reluctant to substitute its judgment for that of a jury on matters that do not involve complex factual determinations but rather subjects well within the understanding of a layperson. Klein v. Hollings, 992 F.2d 1285, 1290 (3d Cir. 1993).

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2. It was uncontroverted that plaintiff had expended $81,989.50 for medical treatment prior to trial, including $27,390.52 for prescription medications.

3. Defendants correctly note that federal law provides the standard for determining whether plaintiff is entitled to a new trial pursuant to Fed. R. Civ. P. 59, but incorrectly presume that the court should not consider Pennsylvania cases plaintiff cites regarding the adequacy of damages. Federal courts sitting in diversity look to state law to determine the adequacy of damages. See, e.g., Penney v. Praxair, Inc., 1997 WL 332426, *2 (8th Cir. June 19, 1997) (Iowa law); Davis v. Wal-Mart Stores, Inc., 967 F.2d 1563, 1566 (11th Cir. 1992) (Florida law).

A new trial on the ground of inadequate damages is appropriate only when a jury awards an amount "substantially less than was unquestionably proven" with "uncontradicted and undisputed evidence." Semper v. Santos, 845 F.2d 1233, 1236 (3d Cir. 1988) (internal quotations and citation omitted). Moreover, a jury may rationally reject even uncontradicted testimony which it finds unconvincing. Id. at 1237. A determination regarding pain and suffering is "peculiarly within the province of the jury." Id.; Maylie v. National R.R. Passenger Corp., 791 F. Supp. 477, 482 (E.D. Pa.), aff'd, 983 F.2d 1051 (3d Cir. 1992).

A court generally should attempt to harmonize answers to interrogatories if possible under a fair view of the case. Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355, 364 (1962); Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88, 104-05 (3d Cir. 1993). The award of medical expenses without an award of damages for pain and suffering is not necessarily inconsistent. See Penney, 1997 WL 332426 at *2 (awarding $34,602 in past and future medical expenses but nothing for pain and suffering not inconsistent where extent of plaintiff's injuries and whether accident caused pain were disputed and plaintiff had heart attack and angioplasty between time of accident and trial); Davis, 967 F.2d at 1566-67 (awarding $28,000 in past and future medical expenses but nothing for pain and suffering not inconsistent where there was evidence plaintiff's pain may have been caused by pre-existing degenerative condition); Gans v. C.F. Menninger Mem'l Hosp., 888

F. Supp. 125, 127 (D. Kan. 1995) (award of medical expenses not inconsistent with failure to award damages for pain and suffering), aff'd, 94 F.3d 655 (10th Cir. 1996).

Plaintiff' evidence concerning his ability to work in the future was controverted. There was evidence suggesting that plaintiff may have sabotaged a job interview and there was testimony from a vocational expert that plaintiff is capable of returning to work which the jury reasonably could have credited. It is also not inherently inconsistent to find that plaintiff requires future medication and that with judicious use of such medication, he is capable of working and averting pain. A plaintiff is not entitled to recover for pain which he would have suffered but for his use of pain medication.

Defendants presented evidence from which the jury reasonably could have found that plaintiff's back problems and any related pain were not caused by the accident, but rather resulted from a degenerative condition which had evolved over many years. Plaintiff presented considerable testimony that he has experienced pain and suffering from the time of the accident. The jury reasonably could have discounted this testimony based on other evidence, including accounts of three distant vacation trips taken by plaintiff between the accident and the trial. The jury, however, found that plaintiff incurred significant medical expenses and, in awarding the full amount of past lost earnings, that he was unable to perform even light duty work for a substantial period as a result of the accident.

The findings of the jury in this regard cannot fairly be reconciled. The jury could not reasonably have found that the accident caused plaintiff to incur substantial medical expenses, including the cost of pain medication, and disabled him from working for a lengthy period while causing him absolutely no pain and suffering. See Brooks v. Brattleboro Mem'l Hosp., 958 F.2d 525, 530 (2d Cir. 1992) (verdict inconsistent where jury found defendants' negligence caused all of plaintiff's medical expenses but awarded nothing for contemporaneous pain and suffering); Pagan v. Shoney's, Inc., 931 F.2d 334, 337 (5th Cir. 1991) (verdict awarding significant damages for medical expenses and loss of earnings but nothing for pain and suffering inconsistent); G. Hammarskjold v. Fountain Powerboats, 782 F. Supp. 1032, 1033-34 (E.D. Pa. 1992) ($27,127 in pain and suffering inadequate where jury awarded full medical expenses incurred on claim of serious injury).

Herbert v. National R.R. Passenger Corp., 1996 WL 745232 (E.D. Pa. Dec. 24, 1996), relied on by defendants, is not to the contrary. Plaintiff in Herbert was doing heavy work. The court denied plaintiff's motion for a new trial where the jury awarded him damages for lost earnings and nothing for pain and suffering. There was evidence in Herbert that the plaintiff suffered from a pre-existing degenerative disc condition and was engaged in weight-lifting shortly after the accident. The court concluded that "the jury rationally could have found that the accident merely increased the weakness of plaintiff's back and

somewhat accelerated the time after which heavy work would no longer be advisable, but that he received no medical treatment and endured no more pain and suffering than he otherwise would have had this particular accident never occurred."

It is tenable for a jury to find that an accident exacerbated a plaintiff's pre-existing condition just enough to prevent him from engaging in heavy duty work but did not cause him pain and suffering that he would not have otherwise experienced. It is not reasonable, however, for a jury to find that as a result of an accident plaintiff sustained substantial expenses for medical treatment, including pain medication and a painful procedure, and also find that he experienced no pain and suffering.

The jury was obligated to award plaintiff some amount for pain and suffering once it found that his fall from the chair caused him to sustain $175,000 in medical expenses and was sufficiently debilitating to prevent even light duty work. The court instructed the jury that if it found the accident at issue caused the injury claimed by plaintiff, he was entitled to recover for all compensable items of damages including pain and suffering. The jury reasonably could have discounted the testimony of pain or concluded plaintiff was exaggerating. By failing to award plaintiff any amount for pain and suffering in the circumstances, however, it appears that the jury disregarded

the court's instructions.[4] A verdict which reflects a failure of a jury to follow instructions of the court or to decide the questions submitted on the merits is a miscarriage of justice. See, e.g., Thomas v. Stalter, 20 F.3d 298, 303 (7th Cir. 1994); Vidrine v. Kansas City S. Ry. Co., 466 F.2d 1217, 1225 (5th Cir. 1972); Hopkins v. Coen, 431 F.2d 1055, 1059 (6th Cir. 1970).

The court does not presume to know the thought processes of the jurors or precisely why they made the award they did. The findings of the jury regarding pain and suffering and other damages allegedly caused by the accident, however, are inconsistent and cannot reasonably be reconciled. Plaintiff is entitled to the new trial which he seeks. An appropriate order will be entered.

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4. This is not the first case of which the court is aware in which, by a question or verdict, a jury has shown reluctance to make an award for pain and suffering where one appeared to be appropriate. Some observers believe this may reflect the spate of information regarding such awards disseminated by insurers, often in explaining, quite properly, so-called limited tort options available to automobile insureds. In any event, jurors are obligated to follow existing law as it applies in the particular case submitted to them.

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O R D E R

AND NOW, this day of November, 1997, upon consideration of plaintiff's Motion for a New Trial, defendants' response thereto and counsel's oral arguments thereon, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and a retrial will be scheduled for early next year after consultation with counsel; and, the parties shall have until December 22, 1997 to obtain a current evaluation of plaintiff's physical condition, medication and prognosis; to discover information regarding any income earned or efforts to secure some gainful employment by plaintiff; and, to update their expert reports, pretrial and trial memoranda.

BY THE COURT:

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JAY C. WALDMAN, J.