

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

| | | |
|-----------------------------|---|--------------|
| MARGARET ALLING, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | NO. 00-5228 |
| | : | |
| JOHNSON CONTROLS, INC., | : | |
| HOOVER UNIVERSAL, INC., | : | |
| MILACRON MARKETING COMPANY, | : | |
| MILACRON, INC. and | : | |
| UNILOY MILACRON, INC., | : | |
| Defendants. | : | |

MEMORANDUM

BUCKWALTER, J.

January 15, 2002

The trial in this case began on the afternoon of November 5, 2001. The only issue before the jury was damages, defendant Hoover Universal, Inc. (Hoover) having admitted liability.

The trial after opening statements consisted of plaintiff's testimony, with no cross-examination, plaintiff's treating physician's videotaped testimony, closing arguments, and the court's charge, to which defendant's only objection was granted. The jury began deliberating at 4:15 p.m. and adjourned at approximately 5:10 p.m. Although not part of the record, counsel do not dispute that the jury was told not to discuss the case

with anyone prior to their leaving the courthouse on November 5, 2001. The jury returned on November 6, 2001 and reached its verdict at approximately 10:00 a.m.

That verdict, in the amount of \$3 million, was accordingly entered by the court as the judgment in this case.

Defendant believes the award is grossly excessive. The court agrees. The facts of the case viewed most favorably to the plaintiff follow.

I. FACTS

When Margaret Alling was 52 years old, she had part of two of her fingers of her left hand burned off because of the admitted negligence of defendant Hoover. She is a high school graduate and has always worked with her hands and this injury now affects her in many aspects of her daily way of life. She is, however, right-hand dominant.

Mrs. Alling testified that on November 20, 1998, two fingers of her left hand were stuck in a machine for five minutes at 350 degrees. She was cleaning the heads of the machine manufactured by Hoover. Apparently, she accidentally hit an emergency button and the machine closed on her left hand. While her hand was stuck in this machine for five minutes, she could smell flesh burning. She was rushed to an emergency room and then sent to a hand specialist. The efforts to save her fingers were unsuccessful and her fingers had to be amputated twenty days after the accident.

As described by Dr. Dabb, plaintiff sustained a fourth degree burn involving her index finger between the proximal joint and the distal joint. On the long finger, her injury was more distal, over the tip of the finger. A few days later, on December 9, 1998, Dr. Dabb amputated the ends of the two fingers. The amputations were at the proximal joint of the index finger and at the distal joint of the long finger. In Dr. Dabb's opinion, plaintiff has a 35% to 40% functional disability as it relates to her two fingers.

Mrs. Alling underwent physical therapy and couldn't work for approximately six months. She testified about the pain she has had since and still has. She had to see a psychologist a number of times. Ultimately, she took a job with the same company six months after the accident but had to move to Massachusetts. She was constantly uncomfortable to be around machinery. She used to type 100 words a minute and now she types 30 words a minute. Recently, she has taken a job as a chef basically to get away from machinery and she has had problems at that job in that she cannot peel certain vegetables, cannot lift heavy pots, and drops things. Things she used to be able to do in the gym she can no longer do because she cannot adequately use her hand. She used to do pushups at home and she cannot do that anymore. She used to enjoy crocheting and she cannot do that anymore. It is harder for her to sew. Prior to the accident, she was essentially ambidextrous and very quick in the use of both hands and she no longer is. From the moment she wakes up and thinks about this case until she goes

to bed, it affects her. She has trouble dressing and washing herself and going to the bathroom. She has difficulty putting on jewelry and earrings. She spills things when she tries to eat. She tries not to use her damaged hand. She cannot open things like frozen orange juice containers. She needs other people to open jars for her. When eating, she has to hold a fork in a “funny way” and it is hard for her to cut meat. She doesn’t go out to dinner anymore because she is embarrassed for people to see her hand. People, particularly young children, stare and have made comments. When she is in the shower, she drops soap many times. When she needs to give change at toll booths and the like, it is most difficult. Even today she has pain. The stubs are “numbish.” She demonstrated to the jury things that she cannot do because it would hurt her hand. It bothers her when she sleeps. She constantly tries to hide her hand from the public. She doesn’t wear jewelry because she doesn’t want to bring attention to her hand. She came down and showed the hand to the jury and demonstrated how she cannot move the parts of the digits that remain. In short, this young woman with a 27 year life expectancy testified that this injury has “ruined her life.”

Dr. Dabb, the hand specialist who as previously stated treated Mrs. Alling and amputated her fingers, testified that Mrs. Alling sustained full thickness burns to the index and long finger on her left hand. He told the jury that this was the worst kind of burn that you could have, namely, a fourth degree burn and that it burned through the skin, the subcutaneous tissue, the blood vessels, the nerves, and “actually burned part of

the bone of both fingers.” He explained the several awful options he gave to the patient when he saw her, including an option of burying the fingers and grafting them into her chest for a period of time and then removing them from that area several weeks later with skin grafts, or shortening the fingers and using adjacent tissue that wasn’t burned as a local flap to try to maintain as much of the length of the fingers as possible, or attempting to transfer parts of the toes to the hand. Unfortunately, the only viable option that was really left was to take off part of Mrs. Alling’s two fingers. This doctor described Mrs. Alling’s post surgical case and the many problems she had with that, including a concern that she was getting a sympathetic dystrophy at one point. He discussed the physical therapy she needed and the fact that she was becoming “exceptionally depressed and emotionally fragile” and that he therefore referred her to a psychologist whom she saw on many occasions. He talked about the painkillers that she needed, including Percocet and Vicodin, and other oral narcotics for pain medication. He assessed her disability as a “near total loss of the index and long finger. He concluded that when he last saw Mrs. Alling there was “a psychiatric overlay with a tremendous anxiety to go back around machinery.” He has concluded that she would not be a candidate for further reconstruction. In short, because of her injury, the past, present and future (life expectancy of 27 more years) has been a devastating situation for Mrs. Alling, both functionally and emotionally, in many aspects of her daily living.

Based upon the foregoing, the jury was asked to consider as damages past and future pain and suffering, disfigurement, humiliation and embarrassment, and loss of enjoyment of life.

II. DISCUSSION

As stated in Evan v. Port Authority of New York and New Jersey, ___ F.3d ___, (3d Cir. 2001):

Our precedent establishes that District Court reviewing a jury verdict has an “obligation ... to uphold the jury’s award if there exists a reasonable basis to do so.” *Motter v. Everest & Jennings, Inc.*, 883 F.2d 1223, 1230 (3d Cir. 1989). “[T]he court may not vacate or reduce the award merely because it would have granted a lesser amount of damages.” *Id.* A new trial is warranted based “upon [a] showing that ‘the jury verdict resulted from passion or prejudice.’” *Hurley v. Atlantic City Police Depart.*, 174 F.3d 95, 114 (3d Cir. 1999), *cert. denied*, 528 U.S. 1074, 120 S.Ct. 786, 145 L.Ed.2d 663 (2000) (quoting *Dunn v. HOVIC*, 1 F.3d 1371, 1383 (3d Cir. 1993)). “[T]he size of the award alone [is not] enough to prove prejudice and passion.” *Id.* . . . We have an obligation, as did the District Court, to ensure that the compensatory damage award finds support in the record and that the jury did not “abandon analysis for sympathy.” *Gumbs v. Pueblo International, Inc.*, 823 F.2d 768, 773 (3d Cir. 1987).

The Supreme Court in *Grunenthal v. Long Island, Rail Road Co.*, 393 U.S. 156, 159, 89 S.Ct. 331, 21 L.Ed.2d 309, (1968), cited in a footnote the standard for setting aside a verdict as excessive. The footnote reads:

The standard has been variously phrased: “Common phrases are such as: ‘grossly excessive,’ ‘inordinate,’ ‘shocking to the judicial conscience,’ ‘outrageously excessive,’ ‘so large as to shock the

conscience of the court,' 'monstrous,' and many others.'" – referring to *Dagnello v. Long Island R. Co.*, 289 F.2d 797, 806 (2d Cir. 1961).

As I mentioned at the outset, I agree with defendant that the award is grossly excessive. Plaintiff's left hand which she displayed to the court and the jury was in my judgment only noticeable if called to one's attention. The surgery done on her left hand minimized the disfigurement suffered as a result of the accident. Indeed, the plaintiff in testifying used both hands at times to express herself. She did this in a way which made no effort to conceal her left hand. As mentioned, there are some things that she cannot do as well as she used to – for example, sewing, pushups, peeling vegetables, lifting pots and pans, typing, and going to the gym. These are clearly part of the enjoyment of life, but it is clear that this injury does not affect her sight, hearing, or sense of smell, her ability to eat, walk, go to the movies, read, travel, or get around in general – to name just a few of the aspects of life that this injury has not affected in the least.

As I view it, it is clear that plaintiff suffered great pain at the time of the accident and probably during the ensuing medical treatment and may be into the future, although that's not totally clear from the testimony. Regarding future pain, counsel for plaintiff directed the court's attention to p. 42 of the Notes of Testimony as follows:

Q. What were you feeling as far as discomfort or anything for those six months while you were going through the physical therapy?

A. Well, there was always pain.

In short, the record, brief as it is, suggests that the jury may very well have “abandon analysis for sympathy.”

The question of the amount of reduction of the verdict has been addressed by both sides by reference to pretrial offers of settlement and by reference to cases from other jurisdictions. As to the former, the defense points out that the pretrial demand was \$800,000 and the offer was \$75,000. For settlement purposes, I had valued it at \$500,000.

Interestingly, defendant has supplied an exhibit of verdicts and has suggested that the mean average verdict for amputation of fingers on one hand, after adjusting for inflation, is \$486,955.46. I have considered plaintiff’s citation of cases as well.

It does not follow, if those statistics are correct, that such a verdict should result in this case. Neither does it follow that because a \$1.5 million verdict was rendered by a jury in this district for a young man who lost fingers on his left hand that this \$3 million verdict is not excessive (see reference on p. 6 of plaintiff’s brief - footnote 1). Obviously, every case is different and comparison at best gives one a ballpark figure. The Evans case, supra, states that remittitur should be set at the “maximum recovery” that does not shock the judicial conscience.

Considering the cases cited by counsel and my own review of the evidence presented at trial, although I would not have granted the resulting amount, I believe the award should be reduced by one half.

An order follows.

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| Defendants. | : | |

ORDER

AND NOW, this 15th day of January, 2002, upon consideration of Defendant Hoover Universal, Inc.'s Post-Trial Motion for a New Trial, or Alternatively, for Remittitur (Docket No. 31), and Plaintiff's Response thereto, it is hereby ORDERED that said Motion is GRANTED, alternatively for remittitur, as follows:

1. The JUDGMENT entered on November 6, 2001 in the amount of \$3,000,000 is hereby REMITTED to \$1,500,000.
2. Plaintiff is to inform the Court within ten (10) days whether the remitted amount of the judgment is accepted or whether a new trial is demanded.

BY THE COURT:

RONALD L. BUCKWALTER, J.