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

ELIZABETH MULHOLLAND, et al.	:	CIVIL ACTION
v.	:	
SEYMOUR H. HOFFER	:	NO. 04-5981

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

May 1, 2007

Presently before the court are the parties' motions for a new trial pursuant to Fed. R. Civ. P. 59. (Doc. Nos. 38 and 41.) For the reasons stated below, the motions are denied. Because the parties did not timely order the trial transcript, as required by Local Rule 7.1(e), the court relies on its recollection of the trial record when deciding the motions.[1]

I. BACKGROUND

This is a motor vehicle accident case. Plaintiff, Elizabeth Mulholland, a resident of Pennsylvania, is a seventy-three year old woman who visited Atlantic City, New Jersey on February 5, 2003. During her visit, she walked across Indiana Avenue where there was vehicular traffic. Mrs. Mulholland admits that at the place where she crossed the street, there was not a cross-walk. At about the same time Mrs. Mulholland was crossing the street, defendant, Seymour Hoffer and his wife, both senior citizens, were driving their mini-van on Indiana Avenue, looking for the parking lot to a nearby casino. After realizing that he had passed the parking lot entrance, Mr. Hoffer stopped his car, placed the car in reverse and slowly backed up

[1] The parties did not comply with the requirements for ordering the transcripts, see Section XXXVI of the Clerk's Handbook and Appendices Y (Transcript Purchase Order Form) and Z (Tape Order Form). Specifically, they never filled out an Order Form and never placed a monetary deposit for the transcript.

at a speed of less than five miles per hour on Indiana Avenue, when his car struck Mrs. Mulholland. Mrs. Mulholland fell to the ground.

As soon as his car struck Mrs. Mulholland, Mr. Hoffer stopped and exited his vehicle, spoke to Mrs. Mulholland, and expressed sorrow for hitting her. According to Mr. Hoffer, Mrs. Mulholland was "shaken up," but she was conscious and otherwise appeared "ok." When Mr. Hoffer realized he needed assistance to pick up Mrs. Mulholland from the ground, he sought help from an unidentified man. Both men were able to pick Mrs. Mulholland up and she subsequently sat down inside the Hoffers' minivan, where she spoke with Mrs. Hoffer. Soon thereafter, a police officer and an Emergency Medical Technician (EMT) arrived at the scene. The EMT found that Mrs. Mulholland was conscious and oriented to her surroundings. The EMT examined Mrs. Mulholland and offered to take her to the nearest hospital, but she refused this offer. Instead, she asked Mr. Hoffer to drive her to the Bally's Casino where she had lunch. After lunch, Mrs. Mulholland boarded the bus for the return trip to Pennsylvania.

Later that evening, at the urging of her daughter, Mrs. Mulholland went to a hospital in Pennsylvania, where she was examined. The doctors noticed a bump on her head. However, a CT scan of her head was normal. Likewise, x-rays of the right hip, knee and wrist were normal. Mrs. Mulholland was released from the hospital that same evening.

Almost two years after the accident, Mrs. Mulholland and her husband brought suit against Mr. Hoffer for negligence. She claimed that she lost consciousness immediately after the accident and as a result suffers episodic headaches. Furthermore, she claimed injury to her knees, wrist, neck and back as the result of falling to the ground. She requested damage for pain, suffering and future medical expenses. Mr. Mulholland also brought a loss of consortium claim,

alleging that his relationship with his wife suffered as a result of the aforementioned injuries and they have been unable to sleep together in the same bedroom since the accident.

II. THE JURY'S VERDICT

From March 9, 2007 to March 14, 2007, the jury heard the case and rendered a verdict by way of written Interrogatories. The jury found Mr. Hoffer negligent in the amount of fifty-five percent and found Mrs. Mulholland contributorily negligent in the amount of forty-five percent. The jury rejected Mr. Mulholland's loss of consortium claim. They awarded Mrs. Mulholland $100,000 for future medical bills, but awarded no damages for Mrs. Mulholland's pain and suffering claim. After reduction for the jury's finding of comparative negligence, the court entered judgment in the amount of $55,000.

III. STANDARD FOR A MOTION FOR A NEW TRIAL

The grant or denial of a new trial is a matter of procedure governed by federal law and not by state law or practice. Vizzini v. Ford Motor Co., 569 F.2d 754, 760 (3d Cir. 1977). A decision to grant or deny a motion for new trial is within the sound discretion of the trial judge. Bonjorno v. Kaiser Aluminum and Chem. Corp., 752 F.2d 802, 812 (3d Cir. 1984), cert. denied, 477 U.S. 908 (1986). A court should not grant a new trial unless the moving party meets the heavy burden of showing that the verdict is clearly against the weight of the evidence or is necessary to correct an injustice. Roebuck v. Drexel Univ., 852 F.2d 715, 735-36 (3d Cir. 1988).

IV. PLAINTIFFS' MOTION

Claim No. 1: Inconsistent Verdict As a Matter of Law.

In their motion for a new trial, plaintiffs raise four issues. The first claim is that

as a matter of Pennsylvania law, "the jury cannot find the defendant negligent, that the defendant's negligence was the factual cause of plaintiffs' injuries, award $100,000 for future medical treatment, but not award monies for pain and suffering." (Pls.' Mem. at 1.) The Pennsylvania Supreme Court has squarely rejected this argument. In Davis v. Mullen, 773 A.2d 764 (Pa. 2001), the Pennsylvania Supreme Court upheld a jury award of medical expenses without a corresponding award of damages for pain and suffering. The court held that such a verdict is not necessarily inconsistent. Id. at 768. Specifically, the court rejected "the Superior Court's application of a per se rule precluding a jury from awarding medical expenses without damages for pain and suffering." Id. at 769. Accord Manes v. Metro-North Commuter R.R., 801 F. Supp. 954, 961 (D. Conn. 1992) ("While the awarding of past and future lost earnings and medical expenses without a finding of damages for pain and suffering is unusual, it is not necessarily an inconsistency that as a matter of law, . . . would require this court to grant . . . a new trial.").

Claim No. 2: Inconsistent Verdict As a Matter of Fact.

Plaintiffs' second argument in support of their motion for new trial is that the jury verdict is "nonsensical and inconsistent as the jury was confused where it found that defendant was negligent, that defendant's negligence was the factual cause of plaintiff's injuries, awarded $100,000 for future medical treatment, but awarded zero damages for pain and suffering." (Pls.' Mem. at 2.)

In reviewing plaintiffs' inconsistency claim, "[t]he critical question . . . is whether the jury's answers in the verdict are necessarily inconsistent with each other . . . [A] district court must render a judgment that makes the jury's answers consistent if such a construction is

possible." Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88, 104 (3d Cir. 1993). The district court must be able to provide "a minimally plausible" explanation for the jury's verdict. Id. at 105. The court has a "duty to attempt to read the verdict in a manner that resolves inconsistences." Mosley v. Wilson, 102 F.3d 85, 90 (3d Cir. 1996) (quoting Los Angeles v. Heller, 475 U.S. 796, 806 (1986) (Stevens, J., dissenting)). As one court has stated: "[I]f there is an apparent inconsistency in a jury verdict, the trial judge is obligated to uphold it if there is any way to justify it." Zarow-Smith v. New Jersey Transit Rail Operations, Inc., 953 F. Supp. 581, 591 (D.N.J. 1997) (denying new trial when jury declined to make award for pain and suffering in addition to award for pecuniary loss to the plaintiff). See also Semper v. Santos, 845 F.2d 1233, 1237 (3d Cir. 1988) (court upheld jury verdict in automobile accident case where verdict was for out-of-pocket expenses only and no award for pain and suffering); Trout v. Shop Rite Supermarkets, Inc., 1991 WL 16554, at *1 (E.D. Pa. Feb. 6, 1991) (motion for new trial denied in slip and fall case when jury awarded only past medical expenses but no damages for pain and suffering); Catalano v. Bujak, 642 A.2d 448, 451 (Pa. 1994) (jury award of medical expenses without a corresponding award of damages for pain and suffering was not necessarily inconsistent and new trial was denied); Boggavarapu v. Ponist, 542 A.2d 516, 518 (Pa. 1988) (same); Majczyk v. Oesch, 789 A.2d 717, 725-26 (Pa. Super. Ct. 2001) (same).

Applying these principles to the facts of this case, the court must deny the request for a new trial based on the alleged inconsistency of the verdict. As noted earlier, Mrs. Mulholland claims to have lost consciousness from a head injury and hurt her knee, wrist and back as a result of the fall. She admitted that the injuries to the knee and wrist healed quickly and she did not testify extensively about those injuries. Indeed, at various times during the trial,

plaintiffs' counsel claimed that his clients were making "no claim" for any injuries to Mrs. Mulholland's knees. To the extent Mrs. Mulholland testified that she suffered pain in her knee and wrist, the jury was always free not to believe that testimony. See Semper, 845 F.2d at 1237 (a jury is free to reject plaintiff's testimony as to pain and suffering). While the jury may have concluded that Mrs. Mulholland suffered "some painful inconvenience" to the knee and wrist for a few days or weeks after the accident, it also may have concluded that her "discomfort was the sort of transient rub of life for which compensation is not warranted." Majczyk, 789 A.2d at 726.

Mrs. Mulholland's primary complaint was her neck and back pain and this was the focus of the two medical experts who testified at trial. Plaintiffs' expert, Bruce Grossinger, D.O., testified that Mrs. Mulholland suffers from lumbar and cervical pain. Dr. Grossinger opined that the "compelling cause" of the pain was the trauma from the accident. (Dep. at 26, 59.) Dr. Grossinger conceded, however, that MRI tests on Mrs. Mulholland showed "degenerative changes" in her spine related to her advanced age. (Dep. at 78-79.) In contrast, defendant's expert, William Carroll, M.D., stated that any problems Mrs. Mulholland experienced with her cervical spine were caused by long-standing degenerative disc disease unrelated to the accident. Dr. Carroll further said that any problems with Mrs. Mulholland's lumbar spine were due to degenerative changes related to arthritis and not related to the accident. His opinion was corroborated by a report from Dr. Stuart Gordon, an orthopedic surgeon.

Dr. Grossinger and Mrs. Mulholland testified that she received steroid injections to her spine which alleviated the pain to some degree. Dr. Grossinger testified that the cost of future medical treatments associated with the treatment of plaintiff's spinal pain was approximately $77,000, if, according to the mortality tables, Mrs. Mulholland lives to age eighty-

six. Dr. Grossinger explained that these treatments would assist Mrs. Mulholland in managing her pain, but would not address any of the underlying causes of the pain. (Dep. at 44-45, 48.) Mrs. Mulholland's claim for future medical expenses relates solely to her back and neck complaints and, again, are only for pain management. (Dep. at 44.)

The court can easily reconcile the jury's verdict. It is clear that the jury rejected plaintiff's claim that she experienced headaches because she lost consciousness at the scene of the accident. While she did have a bruise on her head, both the EMT, who examined her at the scene, and Mr. and Mrs. Hoffer all testified that plaintiff was alert, oriented and responsive at the accident scene. She was not unconscious as she claimed. The bruises to the knee and wrists were not serious and the pain therefore was minimal and transient; the jury had the discretion not to award damages for these minor injuries. See Boggavarapu, 542 A.2d at 518 (jury is not compelled to believe that a dog bite or a puncture by a needle causes compensable pain; jury may believe that it is a transient rub of life and living, a momentary state of fear and pain or neither).

The jury received conflicting testimony from the medical experts as to the cause of Mrs. Mulholland's neck and back problems. The jury resolved this conflict in testimony. It rejected Mr. Mulholland's loss of consortium claim, finding that any problems in his marital relationship with his wife were not caused by back and neck problems attributed to the accident. While the jury concluded that some portion of the back and neck problems were attributable to the fall caused by Mr. Hoffer's automobile, the jury rejected Mrs. Mulholland's claim that all of her pain was caused by the accident. Thus, in light of all of these considerations, the jury decided to award Mrs. Mulholland $100,000, which represented full and complete compensation for future medical treatment designed to eliminate all her neck and back pain, whether related to the

accident or caused by degenerative disc disease that pre-existed the date of the accident. Given this award (which exceeded the $77,000 estimate by Dr. Grossinger), the jury reasonably declined to assess separate damages for pain and suffering related to her neck and back problems since the award for future medicals would pay for medical treatment designed to eliminate neck and back pain caused by conditions unrelated to the accident as well as pain related to the accident. Since the jury's verdict is not inconsistent, it cannot be disturbed by this court.

Plaintiffs may feel that the award of the jury was too low, or criticize it because the amount of the verdict could have been better allocated between future medical bills and pain and suffering, but this is not a basis to overturn the jury's verdict. As Judge Nealon aptly stated many years ago:

> [T]he existence and extent of damages being peculiarly a question of fact, great deference is due the determination of the fact-finder. The efficacy of the jury system is that it recognizes the grays which the law too frequently assigns to the limited categories of black and white. Jurors have a tendency to view the evidence as a whole and to apply to it their accumulated experience and combined sense of justice to arrive at a result they believe to be fair to all the parties under all the circumstances. Whether a judgment is low or high, it should stand if there is ample evidence to justify it. It is not the prerogative of the Court to arbitrarily substitute its judgment for that of the jury.

Mainelli v. Haberstroh, 237 F. Supp. 190, 193 (M.D. Pa. 1964) (citations and internal quotations omitted).[2]

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[2] The court understands plaintiffs' only argument to be that the verdict was inconsistent, not that it was inadequate. To the extent plaintiffs have argued that the award is inadequate, such a claim is denied. "Damages assessed by a jury are not to be set aside unless shocking to the judicial conscience or so grossly inadequate as to constitute a miscarriage of justice, or unless the jury's award indicates caprice or mistake or a clear abuse of its fact-finding discretion or the clear influence of partiality, corruption, passion, prejudice, or a misconception of the law." Tann v. Service Distributors, Inc., 56 F.R.D. 593, 598 (E.D. Pa. 1972) (Becker, J.) (citations omitted). For the reasons heretofore stated, plaintiffs have not demonstrated any of the above.

Claim No. 3: The Court Erred In Allowing Evidence of Mrs. Mulholland's Other Medical Conditions.

Plaintiffs' third argument in support of a new trial is that the "court erred in denying plaintiffs' Motion in Limine to preclude evidence of unrelated medical conditions and conditions relating to parts of the body that were not injured in this accident." (Pls.' Mot. at 1; Pls.' Mem. at 3-4.) Plaintiffs argue that this evidence should be excluded on the grounds that the evidence is irrelevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. P. 401.

This court did not broadly deny the motion in limine, as plaintiffs assert. Instead, the court instructed plaintiffs' counsel to make objections at trial to specific evidence of Mrs. Mulholland's medical history which he deemed irrelevant to the issues in the case. At times the court sustained plaintiffs' objections; other times, it overruled the objections. On those occasions when the court overruled plaintiffs' objections to this evidence, the court found that evidence of Mrs. Mulholland's other medical conditions was relevant to her claim for non-economic damages, i.e., pain and suffering and loss of enjoyment of life, as well as Mr. Mulholland's claim of loss of consortium, including a claim for a loss of his wife's support, comfort and assistance. Mr. and Mrs. Mulholland both claimed that as a result of her fall in Atlantic City, Mrs. Mulholland became a "changed person" who was in so much pain that she was restricted in her daily activities, had trouble sleeping, was irritable and could no longer have normal relations with her husband. Evidence that Mrs. Mulholland had other serious medical conditions that could affect her quality of life, or otherwise explain her behavior, was highly relevant for the

jury's assessment of her claim that the automobile accident was the sole cause of her problems. It also was relevant in calculating Mrs. Mulholland's projected life expectancy for the assessment of future medical expenses and non-economic losses. See Smith v. Southland Corp., 738 F. Supp. 923, 926 (E.D. Pa. 1990) ("In conjunction with the use of mortality tables, individual characteristics including the prior health and personal habits of a plaintiff must be considered by a jury before coming to a dollar figure on damages.").

In its instructions to the jury on "Calculating Past and Future Non-Economic Losses," the court told the jury that among the factors it should consider in assessing damages for these losses was "the health and physical condition of the plaintiff prior to the injuries."[3] Plaintiffs did not object to this instruction, thus conceding the relevancy of evidence of the health and physical condition of Mrs. Mulholland prior to the accident on her claim for non-economic damages. Thus, the court properly admitted this evidence.

A trial judge is afforded broad discretion in making a relevance determination. Compagnie Des Bauxites De Guinee v. Ins. Co. of North Am., 721 F.2d 109, 117 (3d Cir. 1983). This court did not abuse its discretion in admitting the evidence. For the reasons stated above, the evidence in question satisfies the liberal standard of admissibility set forth in Fed. R. Evid. 401 and the probative value of the evidence outweighs any unfair prejudice to the plaintiffs under Fed. R. Evid. 403. Accordingly, plaintiffs' third claim must be denied.

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[3] See Pa. Suggested Standard Jury Instructions, Civ. § 6.09 (3d ed. 2005).

Claim No. 4: Court's Remark Made During Plaintiffs' Counsel's Closing Argument.

Plaintiffs' final claim is that during closing argument their counsel stated that the investigating police officer at the scene of the accident found that only the defendant was the contributing cause of the accident and that when defense counsel objected to this representation, "the Court, in front of the jury, stated in substance that the Court did not believe that to be the testimony of the police witness." (Pls.' Mem. at 4.)

The plaintiffs' final claim is premised upon the erroneous belief that the court stated that it did not believe the characterization by plaintiffs' counsel of the police report regarding who was at fault for the accident. After plaintiffs' counsel made these remarks, defense counsel objected and complained to the court that plaintiffs' counsel misrepresented the findings of the police report. Defense counsel stated that the investigating officer made no conclusion regarding who was at fault. At this point, the trial judge told plaintiffs' counsel that he did not recall the police officer concluding that defendant was the sole cause of the accident. Plaintiffs' counsel responded that the officer did reach this conclusion. Thereupon the court instructed the jury that the jury's recollection of the evidence controls, and if it differed from the parties' or the court's recollection, it is the jury's recollection which is determinative. At the conclusion of the case, the court again gave a similar instruction to the jury:

> You must not read . . . into anything that I have said or done, any suggestions as to what verdict you should return – that is a matter entirely for you to decide.
>
> . . . .
>
> Arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and in their summations is intended to help you to understand the evidence to reach your verdict. However,

> if your recollection of these facts differs from the lawyers' statements, it is your recollection which controls.
>
> . . . .
>
> Finally, statements which I may have made concerning the quality of the evidence do not constitute evidence. It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

(Instructions at 2, 5-6.)

During deliberations, the jury asked to review the police report of the motor vehicle accident. The court provided the jury with a copy of the report. The jury, therefore, could determine for themselves whether the investigating officer reached a conclusion as to whether defendant was the sole contributing cause of the accident. The court did not commit any error by questioning counsel as to his statement when faced with an objection by opposing counsel asserting that counsel's statement was incorrect. Immediately thereafter, and again before deliberations, the court instructed the jury that the jury's recollection of the evidence controls, not the lawyers' or the court's. In any event, any error that may have been committed by the court was harmless and does not warrant a new trial. See Fed. R. Civ. P. 61 (new trial cannot be granted for harmless error).

V. DEFENDANT'S MOTION FOR A NEW TRIAL[4]

Defendant, Seymour Hoffer, also has filed a motion for a new trial. He raises the following five issues:

[4] In response to defendant's motion, plaintiffs argue that the motion should be dismissed as untimely. The court rejects this argument and finds that the motion is timely pursuant to Fed. R. Civ. P. 59(b) and (6)(a).

Claim No. 1: Failure of the Court to Submit to the Jury Records of Diagnostic Tests Performed On Mrs. Mulholland During Her Visit at the Hospital.

At the conclusion of the trial, both parties agreed that the trial exhibits would not be submitted to the jury unless requested by the jury. During their deliberations, the jury requested copies of the Emergency Room records at the hospital where Mrs. Mulholland sought treatment shortly after the accident. Plaintiffs' counsel told the court that the Emergency Room records only consisted of three documents and only these should be given to the jury. Defense counsel, however, insisted that records of all diagnostic tests performed that day at the hospital should be included. To resolve this dispute, the court summoned the jury to open court and asked them whether it wanted just the three documents from the Emergency Room or the additional diagnostic test results. The jury answered that it only wanted the three documents of the Emergency Room records. Therefore, the court did not err in giving the jury only the exhibits it requested. This is exactly the agreement counsel made when they agreed that only those exhibits the jury requested should be given the jury. Defendant's first claim must be denied.

Claim No. 2: The Court Erred In Not Instructing the Jury on the Duty of a Pedestrian Under New Jersey Law.

Both parties submitted jury instructions based on Pennsylvania law. (Doc. Nos. 12 and 13.) Indeed, most of the instructions that were submitted to the court were taken from Pennsylvania's Standard Suggested Jury Instructions. The court prepared its instructions on the doctrine of negligence based on the submission of the parties and their agreement that Pennsylvania law governed this case. Furthermore, in their proposed jury instructions neither

party submitted instructions on the provisions of the Motor Vehicle Code of Pennsylvania or the New Jersey Motor Vehicle Code.

After the court prepared its instructions and submitted them to the parties on the morning when it was to charge the jury, defense counsel made a supplemental request for a jury instruction on N.J.S.A. 39:4-36, which provides the following: "Every pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." The court declined to give this instruction.

Defendant does not contend that the court's jury instructions on the issue of negligence were incorrect, or that they were inconsistent with New Jersey law. The court's instructions explained the concepts of carelessness, ordinary care under the circumstances and reasonableness. The court reiterated these principles when it charged the jury on the issue of comparative negligence.

The court has wide discretion in ruling on points for charge. United States v. Am. Radiator and Standard Sanitary Corp., 433 F.2d 174, 199 (3d Cir. 1970), cert. denied, 401 U.S. 948 (1971). A court's refusal to give a requested instruction is not an abuse of discretion where matters are adequately covered in the instruction given. United States v. George, 625 F.2d 1081, 1087 (3d Cir. 1980); Delgrande v. Temple Univ., 1997 WL 560176, at *2 (E.D. Pa. Aug. 7, 1997), aff'd, 151 F.3d 1024 (3d Cir. 1998). As the Third Circuit stated:

> A party has no vested interest in any particular form of instructions; the language of the charge is for the trial court to determine. If, from the entire charge, it appears that the jury has been fairly and adequately instructed, . . . , then the requirements of the law are satisfied.

James v. Cont'l Ins. Co., 424 F.2d 1064, 1065 (3d Cir. 1970).

The court declined to give the instruction on the New Jersey statute for several reasons. First, it was contrary to the previous jury instructions submitted by the parties which applied Pennsylvania law. Second, the proposed instruction would have been incomplete without an instruction on other New Jersey's motor vehicle statutes relating to the duty of a driver who drives in reverse on a highway, and the general duty of a driver to a pedestrian. Defendant provided no instruction or guidance on these points. Last, the court's instructions adequately addressed the issue of Mrs. Mulholland's duty of care and there was no need to discuss specific sections of either New Jersey's or Pennsylvania's Motor Vehicle Code. See McManamon v. Washko, 906 A.2d 1259, 1270 (Pa. Super. Ct. 2006) (no error by court's refusal to give instruction on the duties of a pedestrian and her duty of care for her own safety in the roadway). See also Abbott v. Onopiuk, 263 A.2d 881, 883-84 (Pa. 1970) (no error to refuse instructions on specific duties of various construction professionals in a work place injury case; general negligence instruction sufficient). For all of the above reasons, the court denies defendant's second claim.

Claim No. 3: Plaintiff's Future Medical Expenses.

Defendant's third argument is that the court should not have permitted plaintiffs' expert, Dr. Grossinger, to submit his estimated costs for Mrs. Mulholland's future medical treatment. Defendant claims these costs were not based "in fact" and were contradicted by the actual past billing records. To prove a claim for future medical expenses, a plaintiff "must prove, by expert testimony, not only that future medical expenses will be incurred, but also the reasonable estimated costs of such services." Mendralla v. Weaver Corp., 703 A.2d 480, 485

(Pa. Super. Ct. 1997.) "Because the estimated costs of future services is not within the lay person's general knowledge, the requirement of such testimony eliminates the prospect that the jury's award will be speculative." Id.

Here, plaintiff's treating physician, Dr. Grossinger, testified as to his estimate of the cost of future medical treatment. (Dep. at 53-59.) This included the costs of prescriptions, steroid injections, and physical therapy. Dr. Grossinger had been treating Mrs. Mulholland with many of these modalities for some time and thus was well-informed of plaintiff's need for these treatments as well as their costs. He was well-qualified to give his opinion. The jury was well within its authority to accept Dr. Grossinger's testimony, and this court will not upset its verdict.

Defendant also objects to Dr. Grossinger's estimates because he claims the "amounts submitted should have been reduced to 110% of the treatment schedules as required under Act 6." (Def.'s Mem. at 5.) Contrary to defendant's assertion, Dr. Grossinger did testify that the amounts were reduced in accordance with Act 6, 75 Pa. Cons. State. Ann. § 1797(a). See Dep. at 58, 75-76. Defendant presented no evidence to the jury which would contradict Dr. Grossinger's assertion that he reduced the medical bills in accordance with Act 6. Accordingly, defendant's third claim must be denied, and this court need not address plaintiffs' claim that future medical expenses should not be reduced by the formula set forth in the Act. See Pittsburgh Neurosurgery Assoc., Inc., v. Danner, 733 A.2d 1279, 1284 (Pa. Super. Ct. 1999) (cost containment provisions of § 1797(a) apply to "a medical bill remaining after an injured party's first party benefits have dissipated and where the party is seeking recovery from a third-party tortfeasor's liability insurance").

Claim No. 4: Plaintiffs' Summary Chart.

Defendant next argues that the court erred in allowing plaintiffs to introduce into evidence a summary chart showing Mrs. Mulholland's medical treatments related to the accident. This summary chart met the requirements of Fed. R. Evid. 1006. Defendant claims that plaintiffs' counsel failed to provide him with a copy prior to trial. Defendant does not dispute, however, that he had copies of all the underlying records upon which the summary chart was based. The court finds that defendant was not prejudiced by plaintiffs' use of the summary chart since he had all of the underlying medical records before trial and had sufficient opportunity to point out to the jury any inaccuracies in the summary chart either through cross-examination of Mrs. Mulholland or through testimony in his case-in-chief. Defendant's fourth claim is denied.

Claim No. 5: Inconsistency of the Verdict.

Defendant's last claim for a new trial is identical to plaintiffs' first and second claims. Defendant requests that the verdict be set aside, because "no monies were awarded for pain and suffering, but plaintiffs were awarded an inconsistent amount for future medical expenses." (Def.'s Mem. at 6.) This claim is denied for all of the reasons this court has denied plaintiffs' arguments based on the alleged inconsistencies in the verdict.

VI. CONCLUSION

For all of the above reasons, plaintiffs' and defendant's motions for a new trial are **DENIED**. An appropriate order follows:

BY THE COURT:

_____

THOMAS J. RUETER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
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v.	:	
	:	
SEYMOUR H. HOFFER	:	NO. 04-5981

O R D E R

AND NOW, this 1ST day of May, 2007, upon consideration of Plaintiffs' and Defendant's respective Motions for a New Trial, (Doc. Nos. 38 and 41), and the Responses thereto, it is hereby

ORDERED

that the motions are DENIED for the reasons set forth in the accompanying Memorandum of Decision filed this day.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge