

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MARGARET A. DUNNING,	:	
	:	C.A. No. K11C-06-014 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE CO.,	:	
an Illinois corporation,	:	
	:	
Defendant.	:	

Submitted: April 16, 2013

Decided: July 11, 2013

**ORDER**

Upon Plaintiff's Motion for New Trial.

*Denied.*

Scott E. Chambers, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware;  
attorney for Plaintiff.

Brian T. McNelis, Esquire of Young & McNelis, Dover, Delaware; attorney for  
Defendant.

WITHAM, R.J.

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***I. Issue***

The issue before the Court is whether to grant Plaintiff's Rule 59 Motion for a New Trial or in the alternative, as Defendant suggests, order an additur to modify the jury's zero-dollar verdict.

***II. Factual Background***

The case at hand involves a claim for underinsured motorist benefits, whereby Defendant State Farm Mutual Automobile Insurance Company ("Defendant") conceded liability for the accident. The parties have agreed that negligence on behalf of Sean Dukes was the proximate cause of the accident. Further, Plaintiff has recovered the policy limits from Sean Dukes' insurer, but alleges her recovery did not adequately compensate her. As a result, she seeks additional recovery from Defendant for underinsured motorist benefits. The only issue before the jury was the amount of reasonable compensation due to the Plaintiff.

At the conclusion of the trial, the jury was asked to decide "what amount of reasonable compensation" Plaintiff is entitled to recover for injuries caused by the traffic accident. The jury returned a verdict in favor of the Plaintiff for a sum of \$0. Plaintiff moved for a new trial on the ground that the verdict is manifestly and palpably against the weight of the evidence. In his responsive motion, Defendant encourages the Court to grant additur rather than a new trial if the verdict must be modified.

***Standard of Review***

Superior Court Civil Rule 59(a) states, in pertinent part, "A new trial may be

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granted as to all or any of the parties, and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court."<sup>1</sup> In deciding such a motion, the Court must weigh the evidence to decide if the verdict was one which might have been reached on reasonable grounds.<sup>2</sup> In analyzing a motion for a new trial, there is a presumption that the jury verdict is correct.<sup>3</sup> In order to be set aside, the jury's verdict must be "against the great weight of the evidence or the verdict shocks the Court's conscience."<sup>4</sup> If the Court finds the verdict to be grossly disproportionate to the evidence presented, it may correct the error with additur or order a new trial.<sup>5</sup>

***III. Parties Contentions***

Plaintiff, pursuant to Superior Court Civil Rule 59, seeks a New Trial as a result of a jury verdict on March 27, 2013, whereby the jury awarded the Plaintiff zero-damages. Plaintiff argues that the jury's verdict was inadequate and inconsistent as a matter of law. Plaintiff relies in large part on *Maier v. Santucci*, where the Delaware Supreme Court addressed a zero verdict judgment, where the existence of

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<sup>1</sup> Del. Super. Ct. Civil R. 59.

<sup>2</sup> *McCloskey v. McKelvey*, 174 A.2d 691, 693 (Del. Super. 1961).

<sup>3</sup> *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. Super. 1975).

<sup>4</sup> *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

<sup>5</sup> *Bradshaw v. Trover*, 1999 WL 1427770 (Del. Super. 1999).

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at least some injury was established.<sup>6</sup>

Defendant argues that the jury did not find the Plaintiff or her medical experts credible and therefore the decision of a zero-verdict should stand. Defendant contends that a zero-verdict is a permissible outcome and points to the Court's oral jury instructions, where the Court instructed the jury to place a number in the jury verdict form "if you so find that a number is appropriate given the evidence." Defendant argues against a new trial, citing *Storey v. Castner*, where the Court found that a new trial could be granted only if a verdict is so out of proportion to the evidence so as to "shock the Court's conscience and sense of judgment."<sup>7</sup> The Defendant requests, relying on *Reid v. Hindt*, should the Court reject their arguments, that the Court grant an additur as opposed to granting a new trial.<sup>8</sup>

***IV. Discussion***

Based on the evidence presented and the relevant case law, the jury's zero-dollar verdict cannot be sustained. In accord with the facts at hand, *Maier v. Santucci* is controlling. There, the Delaware Supreme Court found, in pertinent part "that where the evidence conclusively establishes the existence of an injury, however minimal, a jury award of zero damages is against the weight of the evidence and it is

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<sup>6</sup> 697 A.2d 747, 748 (Del. 1997) (holding that, "where the evidence conclusively establishes the existence of an injury, however minimal, a jury award of zero damages is against the weight of the evidence and it is an abuse of discretion to deny a new trial").

<sup>7</sup> 314 A.2d 187 (Del. 1973).

<sup>8</sup> 976 A.2d 125 (Del. 2009) (holding that a trial judge is within his discretion to grant additur, even absent a motion to do so from the plaintiff).

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an abuse of discretion to deny a new trial<sup>9</sup>. Similarly, in *Amalfitano v. Baker* the Court held:

"where medical experts present uncontradicted evidence of injury, confirmed by objective medical tests supporting a plaintiff's subjective testimony about her injuries and offer opinions that the injuries relate to the accident about which the plaintiff complains, a jury award of zero damages is against the weight of the evidence."<sup>10</sup>

While Defendant's medical expert disputed whether the Plaintiff suffered any permanent injuries causally related to the accident, there was uncontroverted evidence that Plaintiff sustained at least some temporary injuries. There was no evidence presented that Plaintiff was not injured and Defense counsel made no such arguments.

The case law supports the Plaintiff's contention that a zero damages award in this case is against established Delaware precedent. However, at this stage, the Court declines to order a new trial. In the alternative, as the Defendant had suggested, the Court will modify the verdict by order of an additur. The Defendant will now have the option of either accepting the additur or submitting to a new trial on the issue of damages.<sup>11</sup>

***IV. Conclusion***

Plaintiff's motion for a new trial is ***denied***. The Defendant has the option of

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<sup>9</sup> 697 A.2d 747, 748 (Del. 1997).

<sup>10</sup> 794 A.2d 575, 576 (Del. 2001).

<sup>11</sup> *Carney v. Preston*, 683 A.2d 47, 50 (Del. Super. Ct. 1996).

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accepting the Court's \$7,500 additur or submitting to a new trial on the issue of damages.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh