IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

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| SANDRA RUMANEK, | ) | |
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| Plaintiff, | ) | |
| | ) | |
| v. | ) | C.A. No. N11C-04-108 CEB |
| | ) | |
| MARGARET COONS AND THERESA THEODORE, | ) | |
| | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

Date Submitted: July 11, 2013
Date Decided: September 13, 2013

**MEMORANDUM OPINION.**

*Upon Consideration of*
*Plaintiff's Motion for a New Trial.*
**DENIED.**

Joseph J. Rhoades, Esquire, LAW OFFICES OF JOSEPH J. RHOADES, Wilmington, Delaware. Attorney for Plaintiff Sandra Rumanek.

Louis J. Rizzo, Jr., Esquire, REGER RIZZO & DARNALL, Wilmington, Delaware. Attorney for Defendant Margaret Coons.

**BUTLER, J.**

## INTRODUCTION

Before the Court is plaintiff's motion for a new trial based on the following allegations: (1) the jury's verdict was against the great weight of evidence; (2) comments from counsel's closing statement improperly influenced the jury; and (3) the Court's explanatory instruction regarding plaintiff's EEOC "right to sue" letter from her pending retaliation claim improperly influenced the jury. For the reasons set for below, plaintiff's motion is hereby **DENIED.**

## FACTUAL BACKGROUND

On November 1, 2009, Sandra Rumanek ("plaintiff") was stopped in the right turn lane on Montchanin Road at the intersection of Montchanin Road and Route 141. While stopped, plaintiff was struck from behind by a car driven by Margaret Coons ("defendant"). The severity of the strike was in evidence, as were photographs of the automobiles in question, depicting only modest damage to each of the respective vehicles. Plaintiff testified that the minor collision shocked her and caused her to jolt, but denied that her head actually contacted any part of the vehicle. Pointedly, defendant took a photograph of plaintiff standing outside her vehicle shortly afterwards using her cell phone to make a call.

Plaintiff also claimed injury from a subsequent accident on November 20, 2009, in which she was involved in a low speed collision with another vehicle

in a parking lot. Although this later case resolved before trial, the jury was permitted to hear about it because it bore upon plaintiff's injuries and the relative liabilities of the two separate alleged tortfeasors. At trial, plaintiff claimed it was the initial collision with defendant that caused plaintiff to suffer a closed head injury, resulting in difficulty with memory, anxiety, depression, cognitive function, and multitasking.

At trial, plaintiff's injuries and their genesis were hotly contested. To support her claim of a closed head injury, plaintiff produced three healthcare experts; but they admitted that their testimony was largely based on the subjective reporting of plaintiff.

At the end of the trial, the jury determined that 1) defendant negligently caused the motor vehicle accident, 2) the driver in the subsequent parking lot collision, which settled pretrial, was not negligent, and 3) plaintiff should be awarded $1 in damages.

Plaintiff now seeks a new trial, arguing that the damages award ought to shock the Court's conscience and that two evidentiary rulings made during the trial prejudiced her case. The Court disagrees and denies the motion for a new trial.

## STANDARD OF REVIEW

For good reason, there is a presumption that a jury's verdict is correct.[1] A jury's verdict will not be disturbed unless it is manifestly against the great weight of the evidence, or if the award is so grossly out of proportion that it "shocks the conscience" of the Court.[2] In those rare cases, the Court may correct the error with *additur* or by ordering a new trial.[3]

## LEGAL ANALYSIS

Plaintiff's first claim is that the jury's verdict is against the great weight of the evidence and should shock the conscience of the Court. Plaintiff urges that three experts testified that plaintiff's injuries are consistent with closed head trauma and that the jury determined that defendant was negligent. Plaintiff says one cannot reconcile the jury's finding of negligence by defendant and its award of only $1 in damages.

In analyzing plaintiff's claim, it is useful to recall the role of the jury. A jury may determine that objective indicia of injury are minimal and not worthy of

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[1] *Storey v. Castner*, 314 A.2d 187, 193 (Del. 1973) (citing *Lacey v. Beck*, 161 A.2d 579, 580 (Del. Super. Ct. 1960)).

[2] *Cities Serv. Oil Co. v. Launey*, 403 F.2d 537, 540 (5th Cir. 1968); *Dunn v. Riley*, 864 A.2d 905, 906 (Del. 2004); *Young v. Frase*, 702 A.2d 1234, 1236-37 (Del. 1997).

[3] *Young*, 702 A.2d at 1236-37.

compensation.[4] Injuries that are less serious and identifiable are given less weight, especially in cases like this one, where plaintiff testified to unrelated stresses on her mental well being.[5] The jury is free to attribute injuries to other causes, and may find negligence but proffer no damages.[6] "An award of zero damages is not inconsistent as a matter of law with a finding of negligence which was a proximate cause of injury to the plaintiff."[7]

While defendant's negligence was all but conceded, the issue whether plaintiff was "injured" by defendant's negligence was hotly contested at trial. Defendant's medical experts questioned the tenuous causation between the accident involving defendant and plaintiff's purported injuries. Plaintiff admitted an extensive list of pre-existing injuries and numerous past medical visits and

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[4] *Szewczyk v. Doubet*, 354 A.2d 426, 430 (Del. 1976) (citing *Di Gioia v. Schetrompf*, 251 A.2d 569, 570 (Del. Super. Ct. 1969)); *Ayers v. Keny Cnty. Motor Sales Co.*, No. 88C-AU-26, 1991 WL 302606, at *2 (Del. Super. Ct. Dec. 16, 1991). *See also Phila., B. & W.R. Co. v. Gatta*, 85 A. 721, 729 (Del. 1913) ("It is the province of the jury in the trial of civil cases to consider the whole volume of testimony, estimate and weigh its value, accept, reject, reconcile and adjust its conflicting parts and be controlled in the result by that part of the testimony which it finds to be of greater weight.").

[5] *Adams v. Sheldon*, Civ. No. 04-251-LPS, 2012 WL 3779110, at *2-3 (D. Del. Aug. 31, 2012); *Reed v. Gerbec*, No. 97C-09-224 RRC, 1999 WL 1442021, at *1-2 (Del. Super. Ct. Sept. 24, 1999).

[6] *Id.*

[7] *Joseph v. Truitt*, No. C.A. 95C-07-003, 1999 WL 4587770, at *2 (Del. Super. Ct. June 14, 1999). *See also Szewczyk*, 354 A.2d at 430; *Dennis v. Beene*, 1990 WL 263565, at *1 (Del. Super. Ct. Sept. 21, 1990). The Court has held that a jury award of zero damages is against the weight of evidence where the injury has been established as causally related to the accident. *Maier v. Santucci*, 697 A.2d 747, 748-49 (Del. 1997). However, the current case presents disputed causation linking the November 1, 2009 accident to plaintiff's purported injuries. Thus, an award of zero damages would not be contrary to the weight of evidence.

complaints that were of the same or similar nature to plaintiff's injuries allegedly related to the accident. Furthermore, plaintiff's complaints were largely subjective in nature. When rendering a decision, the jury is free to give weight to all these factors.

Based on the disputed facts presented at trial, it is clear enough that the jury simply did not "buy" plaintiff's argument that she suffered a closed head injury with cognitive complications as a result of the accident. There was sufficient evidence to support the jury's finding that defendant was negligent and caused minimal injury and to only award plaintiff minimal damages.[8]

Plaintiff testified that she was startled upon realizing she had been struck from behind. She got out of the car and made a phone call. The transitory, direct "injury" she suffered from the bump from behind was not why she came to Court at all: she came because it was her allegation that the bump caused a much more serious, closed head injury. Having rejected plaintiff's argument that the incident caused a closed head injury, the jury awarded an admittedly token amount, recognizing some minor injury that had not been quantified in any way. The verdict acknowledges defendant's negligence, repudiates plaintiff's theory of

[8] This was not a case in which the jury's award was so clear as to show "it was the result of passion, prejudice, partiality, or corruption." *Storey*, 314 A.2d at 193 (citing *Riegel v. Aastad*, 272 A.2d 715, 717-18 (Del. 1970)).

damages, and reflects the jury's belief that plaintiff lacked quantifiable damages that could be connected solely to the November 1, 2009 accident.

Plaintiff's second claim is based on the following comments made by defense counsel during closing statements: "…But that should not mask the very serious nature of what we are dealing with; what Miss Coons is facing, and what she is being asked to bear the responsibility for in a financial way."[9] Plaintiff submits that the discussion of insurance and who will bear the financial burden warrants a new trial.

While this Court has long held that mention of the presence or absence of insurance is to be avoided, it has also determined that "oblique and obscure" references to insurance do not improperly influence the jury. [10] The contested statement does not suggest the presence or absence of insurance in any way. It was a benign remark meant to highlight the serious nature of the case.

Plaintiff's final claim is that the Court improperly influenced the jury by conveying the impression that the EEOC right to sue letter was unimportant by stating that it "doesn't mean anything, so don't attach any particular significance to

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[9] Pl.'s Mot. for New Trial, Ex. I, 11, June 7, 2013.

[10] *Chavin v. Cope*, 243 A.2d 694, 696-97 (Del. 1968); *Todd v. Tigani*, 1990 WL 199515, at *9 (Del. Super. Ct. Nov. 15, 1990) (holding that the defense counsel's comment that the jury should not take money out of the defendant's pocket did not improperly influence the jury or entitle the plaintiff to a new trial).

it."[11] The facts giving rise to this complaint are these: during cross examination of a defense witness (plaintiff's former employer), plaintiff's counsel directed the witness to an unrelated lawsuit plaintiff had filed against the employer in federal court. Plaintiff's counsel gratuitously asked the witness whether plaintiff had received a "right to sue letter" from the EEOC before filing suit. The obvious import of the questioning was to suggest that the "right to sue" letter from the EEOC was some expression of approval by the EEOC as to the merits of plaintiff's claims against the employer. The questioning was not only irrelevant to this dispute, but may have had the inappropriate effect of bolstering plaintiff's credibility as to the bona fides of her unrelated lawsuit and by implication, this one as well. If a "right to sue" letter from the EEOC were indeed an expression of opinion that plaintiff had a meritorious claim against her former employer, this may indeed be a proper area of inquiry. But since it is not,[12] the questioning was not only irrelevant, but also created an improper inference to the jury.

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[11] The Court's full statement reads as follows:

> [A right to sue letter] is a legal term, and it has to do with the interior administrative rules of the EEOC. It is not an expression of opinion by the EEOC that, "Gee, you've got a great suit," or, "Gee, you've got a lousy suit," or anything else. It is just a – it is an administrative step. You have to get a right to sue letter in order to file in Federal Court; that's all it is . . . It doesn't mean anything, so don't attach any particular significance on it.
> Pl.'s Mot. for New Trial, Ex. I, 10-11, June 7, 2013.

[12] Prior to instituting a Title VII claim in federal court, the claimant must exhaust all administrative remedies by filing an EEOC complaint against the discriminating party. *Burgh v. Borough Council of Borough of Montrose*, 251 F.3d 465, 470 (3rd Cir. 2001). This is a

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The Court therefore felt the proper course of action was to simply advise the jury after a recess that it should make no implication at all from a "right to sue" letter. At the time, plaintiff's counsel pointedly did not disagree that the term was misleading to the layman, nor did he argue that the testimony was actually relevant and proper, but only that the Court should refrain from clarifying the term to the jury since defense counsel had not lodged an objection. That is not the standard by which the Court has a duty to advise the jury.

The trial judge has the responsibility to ensure the trial is conducted in a manner that facilities fairness and truthfulness in the proceedings. Trial judges are "in the best position to observe the impact of improper statements at the time they are made, to determine the extent to which they may have affected the jury or the parties, and to remedy any ill effects."[13] Provided the judge is not expressing an

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requirement that permits the EEOC to investigate the matter, and in some cases, attempt to informally resolve the issue without litigation. *Anjelino v. N.Y. Times Co.*, 200 F.3d 73, 94 (3d Cir. 1999); *Parisi v. Boeing Co.*, 400 F.3d 583, 585 (8th Cir. 2005); *Trujillo v. Santa Clara Cnty.*, 775 F.2d 1359, 1364 (9th Cir. 1985). If reconciliation is unsuccessful, the complaint is not well founded, or the EEOC decides not to litigate the case, a right to sue letter is issued to the complainant." *Id.* A right to sue letter thus is an administrative step which does not reflect the EEOC's opinion on the merits.

[13] *Rodriguez v. State*, 3 A.3d 1098, at *1-2 (Del. 2010) (citing *Smith*, 560 A.2d at 1007); *Thompson v. State*, 886 A.2d 127, at *3-4 (Del. 2005).

opinion on the facts of the case, the trial judge is permitted to explain the legal significance which the law attaches to a particular factual finding.[14]

Based on this standard, the Court did not convey an improper opinion on the facts of the case. The instruction was appropriate to explain a legal term that could possibly confuse the jury. Taken in context, the neutral explanation accurately described the administrative procedure of issuing a right to sue letter and its relationship to the present case.[15] This explanation neither suggested any opinion on the merits of the claim, nor improperly influenced the jury's verdict.

## CONCLUSION

Based on the foregoing, the Court is satisfied that the jury's verdict was supported by the evidence. Accordingly, the motion for a new trial must be **DENIED.**

**IT IS SO ORDERED.**

**/s/ Charles E. Butler**
Charles E. Butler, Judge

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[14] *Hall v. State*, 473 A.2d 352, 356 (Del. 1984).

[15] *See* Pl.'s Mot. for New Trial, Ex. I, 11, June 7, 2013.