

CAUSE NO. 02C220

CLAUDINE SCHILLER, ET AL.,

IN THE DISTRICT COURT

VS.

FOR CASS COUNTY TEXAS

AC AND S, INC., ET AL.

5<sup>TH</sup> JUDICIAL DISTRICT

BY *[Signature]* DEPUTY  
SBECKY WILBANKS  
DISTRICT CLERK

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FILED FOR RECORD  
CASS COUNTY, TEXAS

ORDER ON PLAINTIFF'S MOTION TO DISREGARD  
JURY FINDINGS AND FOR ENTRY OF JUDGMENT  
OR ALTERNATIVELY MOTION FOR MISTRIAL

On this day, came on to be considered Plaintiff's Motion to Disregard Jury Findings and for Entry of Judgment or Alternatively, Motion for Mistrial. The Court GRANTS the Motion to Disregard Jury Findings, in part, and directs the entry of judgment in this case consistent with this order. The parties' Motions for Mistrial and for New Trial are DENIED. The reasons for the Court's order are set forth below.

INTRODUCTION

In this case, the Plaintiff sued several product manufacturers for wrongful death and survival claims related to the untimely death of Manfred Schiller from mesothelioma. The Plaintiffs settled with all defendants except Garlock before trial. At the close of all the evidence, the charge was submitted to the jury. In response to Question No. 1, the jury found that the products of settling defendants Celotex/Carey Canada and Eagle-Picher Industries, Inc., contained a design defect that was a producing cause of Mr. Schiller's disease and death. In response to Question No. 2, the jury found that the products of Garlock and settling defendants Celotex/Carey Canada, Eagle-Picher Industries, Inc., Guard-Line, Inc. and Johns-Manville contained

marketing defects which were a producing cause of Mr. Schiller's illness and death.

In response to Question No. 3, the jury found that Manfred Schiller did not commit any act of negligence that was a proximate cause of his illness and death. In response to Question No. 4, the jury allocated responsibility for Mr. Schiller's illness and death as follows:

- Garlock - 13%;
- Celotex/Carey Canada - 25%;
- Eagle-Picher Industries, Inc. - 25%;
- Guard-Line, Inc. - 1%;
- Johns-Manville - 36%; and
- Manfred Schiller 0%.

The jury found wrongful death damages sustained by Claudine Schiller before and after Manfred Schiller's death to be \$1 million (Question No. 5). The jury found survival damages sustained by Manfred Schiller's Estate to be \$292,200.00 (Question No. 6). The jury did not find that Plaintiffs were entitled to punitive damages.

Plaintiffs have filed their Motion to Disregard Jury Findings and Motion for Entry of Judgment and Taxation of Costs of Court, or Alternatively, Motion for Mistrial for Juror Misconduct. In their Motion to Disregard, Plaintiffs ask the court to disregard the jury's answers to Question No. 1 for Celotex/Carey Canada and Eagle-Picher Industries, Inc.; to Question No. 2 for all defendants except Garlock; and Question No. 4 in its entirety. Plaintiffs then ask the Court to enter judgment in their favor against Garlock for all the

damages found by the jury, together with interest and costs of court. Defendant has filed its Motion to Disregard the Jury Findings on Questions 1 and 2 and render judgment that the Plaintiff take nothing.

Standard of Review of Motion  
to Disregard Jury Findings

Rule 301 of the Texas Rules of Civil Procedure provides

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

A trial court may not disregard a jury's findings because the evidence is factually insufficient. L.H. Land Painting Company, Inc. v. S&P Construction, Inc., 516 S.W.2d 14, 17 (Tex. Civ. App. – Fort Worth 1976, writ dismissed). Rather, a trial court is authorized to disregard a jury's findings only if they have no support in the evidence. Pool v. Dickson, 512 S.W.2d 68, 69 (Tex. Civ. App. – Tyler 1974, writ refused n.r.e.). The decision to disregard a jury finding is essentially a "no evidence" inquiry.

The law is clear in this state that before a trial court can render a judgment non obstante veredicto, based on the absence of evidence, it must determine that there is no evidence having probative force upon which the jury could have made the findings relied on. In making this determination, all evidence must be considered in a light most favorable to the party in whose favor the verdict has been rendered, and every reasonable inference deducible from the evidence is to be indulged in such party's favor.

L.H. Painting Company, Inc. v. S&P Construction, Inc., 516 S.W.2d at 16, quoting from Harbin v. Seale, 461 S.W.2d 591 (Tex. 1970).

But, "a trial court may also disregard a jury finding on its own motion if the special issue is immaterial." Bayliss v. Cernock, 773 S.W.2d 384, 386 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1989, writ denied). "An issue is immaterial when the finding is inapplicable to the case." Id. Moreover, the trial court may disregard a jury finding as immaterial regardless of whether a party filed a written motion and provided notice to the opposing party. Southern Pacific Transport Co. v. Allen, 525 S.W.2d 300, 304 (Tex. Civ. App. – Houston [14<sup>th</sup> Dist.] 1975, no writ). "Further, when a trial court does disregard answers to immaterial issues and render judgment, such judgment is not rendered non obstante veredicto." Id. at 305.

The Court has considered both parties' Motions to Disregard Jury Findings in view of the record, and finds that there was sufficient evidence to support the jury's findings on all issues submitted. Nevertheless, the Court also finds that the jury's answer to Jury Question 4 is immaterial. Specifically, the issue submitted seeks apportionment among the plaintiff, defendant and settling defendants based on comparison of causation, whereas Oregon law apportions responsibility by comparing fault rather than causation. Because the question submitted is immaterial to the case under Oregon law, the Court disregards the jury's answer to Question 4 and enters judgment accordingly.

### Apportionment of Fault in Asbestos-Exposure Cases

In an asbestos exposure case in Texas<sup>1</sup>, where there is exposure to more than one company's product, the plaintiff has the initial burden to demonstrate (1) exposure to the non-settling defendant's asbestos-containing products that are (2) unreasonably dangerous. Once that is done, the burden then shifts to the non-settling defendant to allocate the percentages of responsibility between them. As the Court of Appeals held in Borel v. Fibreboard Paper Products Corp., 493 F.2d 1076, 1095 (5<sup>th</sup> Cir. 1973),

Where several defendants are shown to have each caused some harm, the burden of proof (or burden of going forward) shifts to each defendant to show what portion of the harm he caused. If the defendants are unable to show any reasonable basis for division, they are jointly and severally liable for the total damages.

Consequently, Plaintiff had the initial burden of showing exposure to Garlock's product and that the product was unreasonably dangerous. Once that was done, the burden shifted to Garlock to show what its responsibility is in comparison to the settling defendants. Garlock, as the party with the burden of proof, then had the burden of submitting a question to the jury that properly stated the legal standard by which it could apportion responsibility.

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<sup>1</sup> This case was tried in Texas, so procedural issues are decided under Texas law. However, Oregon is the state with the most significant contacts to this case. Therefore, substantive issues are decided under Oregon law. The issue of which party has the burden of proof is procedural, and therefore Texas law governs that issue. The issue of whether that burden of proof has been met is substantive, and therefore, Oregon law governs that issue.

Question No. 4 should be disregarded because it is immaterial.

In the present case, the parties requested issues which essentially track the law of the State of Texas since both Oregon and Texas follow Restatement of Torts (Second) section 402A in strict product liability cases. For the most part, that is true, but with respect to joint and several liability issues, Oregon law is significantly different.

In Ingram v. AC and S, Inc., et al., 977 F.2d 1332 (9<sup>th</sup> Cir. 1992), the Ninth Circuit Court of Appeals considered the issue of apportionment among joint tortfeasors in an asbestos case applying Oregon law.

Under Oregon law, fault is apportioned not by an allocation of physical causation, "but rather [by] allocating *fault*, which cannot be scientifically measured." Sandford v. Chevrolet Division, 642 P.2d 624, 628 (Or. Sup. Court 1982)(quoting Victor Schwartz, *Comparative Negligence* 276 (1974)). First, if the plaintiff's behavior which was one cause of the injury is alleged to have been negligent or otherwise "fault," it is to be measured against behavior that would have been faultless under the circumstances. The factfinder is to determine the degree to which the plaintiff's behavior fell short of that norm and express this deficit as a numerical percentage, which is then applied to diminish the recoverable damages. There necessarily must be some comparable assessment of the fault attributable to defendants as a departure from the norm invoked against them (which, *in products liability, will involve the magnitude of the defect rather than negligence or moral "blameworthiness"*) in order to determine which is greater. In this comparison, the benchmark for assessing a defendant's fault for marketing a product which is dangerously defective in design, manufacture, or warning is what the product should have been without the defect. The benchmark for the injured claimant's fault is conduct which would not be unlawful or careless in any relevant respect.

Id. at 633-34 (footnote omitted and emphasis added); see also, Dahl v. BMW, 748 P.2d 77, 83-84, n. 5 (Or. Sup. Ct. 1987).

O-I acknowledges that Sandford and Dahl prohibit apportioning liability on the basis of physical causation *between* a negligent plaintiff and a manufacturer of a defective product, but it argues that the Sandford/Dahl prohibition does not apply to a jury's apportionment of liability among defendant manufacturers. We disagree. Oregon

Revised Statute s18.445 requires apportioning liability among joint tortfeasors on the basis of "their relative degrees of fault or responsibility." As "fault" is defined under Oregon law, physical causation cannot be considered. See Sandford, 642 P.2d at 628. Thus, so long as substantial evidence supports the jury's allocation of 13.75% of the "fault" to O-I, its verdict must stand.

Therefore, in a products liability case applying Oregon law, damages among joint tortfeasors is based on the degree by which each defendant's product is defective; it is not based on the degree to which those defects caused the occurrence or injury in question. Stated another way, to apportion fault between two manufacturers in a products liability case, Oregon law requires the fact finder to determine which of the two products is more defective, regardless of which defect caused or contributed to cause more of the occurrence or injury.

By contrast, Texas law apportions responsibility among joint tortfeasors based on causation.

The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons **with respect to each person's causing or contributing to cause** in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard or by any combination of these.

Tex. Civ. Prac. & Rem. Code s33.003. Because Question 4 is based on causation rather than fault, the question does not comply with Oregon law. Consequently, the question becomes whether it can be relied upon in determining the judgment in this case.

As noted, "a trial court may also disregard a jury finding on its own motion if the special issue is immaterial." Bayliss v. Cernock, 773 S.W.2d

384, 386 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1989, writ denied). "An issue is immaterial when the finding is inapplicable to the case." Id.

Yet, there is a distinction between an issue that is immaterial and one that is merely defective.

A question is immaterial when it should not have been submitted, it calls for a finding beyond the province of the jury, such as a question of law, or when it was properly submitted but has been rendered immaterial by other findings. A question is defective, however, if it plainly attempts to request a finding on a recognized cause of action, but does so improperly.

Southeastern Pipeline Company, Inc. v. Tichacek, 997 S.W.2d 166, 172 (Tex. 1999). Furthermore,

A jury's answer to a special issue may be disregarded only when it has no support in the evidence or when the issue is immaterial. Rule 301, Texas Rules of Civil Procedure; McDonald, Texas Civil Practice, ss17.30-17.32. McDonald correctly states that "(a) special issue is immaterial when (1) it should not have been submitted; or (2) though properly submitted, it has been rendered immaterial by other findings," s17.31; but he is equally correct when he states that "\* \* \* if a finding upon the issue claimed to be immaterial could if made, or does as made, create a fatal conflict with other findings or otherwise affect the legal significance of the verdict and hence the judgment to be entered, the issue is material and must not be ignored." s17.31. A trial court thus has no authority because of other apparently conflicting jury findings to disregard a finding with legal significance which has support in the evidence. Moreover, the court may not look to answers to other issues for the purpose of determining whether an answer to a particular issue has support in the evidence.

C & R Transport, Inc. v. Campbell, 406 S.W.2d 191, 194-95 (Tex. 1966). To determine whether Question No. 4 may be relied upon in determining the judgment, the Court must determine whether Question No. 4 is merely defective or immaterial.

The law review article entitled Broad Form Submissions and Spencer v. Eagle Star Insurance Company; the Death of the Immaterial Issue, 46 Baylor

L. Rev. 841 (1994), presents an exhaustive summary of the cases addressing immaterial issues and their applicability under the modern broad-form submission practice. Though it is not binding, the Court has found it to be very helpful in resolving the issue presented in this case.

In the article, the author notes that immaterial questions fall into two categories: those which should not have been submitted, and those rendered immaterial by other findings. The author then identifies four categories of issues which should not have been submitted: (1) defective questions, (2) questions of law, (3) evidentiary questions or questions failing to submit a controlling issue, and (4) questions without legal effect. The author then addresses the impact of the Supreme Court's opinion in Spencer v. Eagle Star Insurance Company of America, 876 S.W.2d 154, 157 (Tex. 1994), on each category of immaterial question. In summary, the author concludes that as a result of Spencer v. Eagle Star Insurance Company, questions which are merely defective cannot be disregarded in the absence of an objection, whereas questions without legal effect may be. Therefore, resolution of the issues in this case ultimately turns on whether Question 4 is merely defective or whether it is without legal effect.

Basically, questions are defective where they misstate the applicable law. Id. at 843. By contrast, where a question accurately states the law, but "possesses no relevance under the substantive law" it is a question without legal effect. Id. at 851. As the author notes,

almost a "so what?" analysis is utilized to render the question or issued submitted irrelevant. The issue or question could be identified as controlling under other circumstances, but the law renders the finding meaningless in the context of that particular case.

Id.<sup>2</sup>

The present case presents a difficult decision. On the one hand, Garlock can argue that the issue is merely defective, because it intended to allocate liability among itself and the settling defendants and mistakenly used causation language rather than fault language. Since allocation of liability was the heart of its case, it is like the plaintiff in Spencer v. Eagle Star Insurance Company, *supra*. On the other hand, Mrs. Schiller can argue that Question 4 is not defective, because it accurately states the law for comparative causation, but is immaterial because the issue is not causation, but fault.

After reviewing the cases exhaustively, the Court determines that Question 4 is not defective, but rather is immaterial and without legal effect. The question comes straight out of the Texas Pattern Jury Charges. It

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<sup>2</sup> The author cites four cases as examples of questions without legal effect: Colvin v. Allsworth, 627 S.W.2d 430, 431 (Tex. App. - Houston [1<sup>st</sup> Dist.], no writ)(In fraud case, jury finding that plaintiffs losses were caused by their own negligence was properly disregarded since "the person committing the fraud cannot defeat a claim for damages based upon a plea that the party defrauded might have discovered the truth by the exercise of ordinary care."); Allstate Insurance Co. v. Kelly, 680 S.W.2d 595 (Tex. App. - Tyler 1984, writ ref'd n.r.e.)(Trial court properly disregarded jury answers finding that insurer's failure to settle with a party suing the insured was due to bona fide mistake because the bona fide mistake defense was legally inapplicable to the causes of action alleged by the insured against the insurer.); Brown v. Armstrong, 713 S.W.2d 725 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, writ ref'd n.r.e.)(Where patient only alleged a failure to diagnose a tubal pregnancy, jury findings that the doctor failed to obtain her informed consent to treatment of tubal pregnancy were properly disregarded as immaterial because informed consent is only applicable to medical and surgical care which has actually been rendered.); and Watson v. Nortex Wholesale Nursery, Inc., 830 S.W.2d 747 (Tex. App. - Tyler 1992, writ denied)(Where jointly-owned corporations using the same workers compensation insurance carrier designated one company as employer for an injured employee in a workers compensation claim, and where the worker then sued the other company for common law negligence, jury findings that the companies elected the first company as the employer in the workers compensation proceeding was immaterial because election of remedies doctrine could not operate to prevent an employer from asserting the workers' compensation bar.).

accurately states the law concerning comparative causation. Therefore, it does not misstate the applicable law; rather, it correctly states the inapplicable law.

A similar conclusion was reached in Holland v. Wal-Mart Stores, Inc., 1 S.W.3d 91, 92 (Tex. 1999). In that case, the Supreme Court considered whether attorneys fees were recoverable in a discrimination case filed under the Texas Workers Compensation Act. The plaintiff alleged that she was injured at work while lifting a box of wrenches. After reporting her work-related injury, her supervisor assigned her to an even more physically demanding job than before. She suffered further injury and took a leave of absence. She filed suit alleging violations of the Texas Deceptive Trade Practices Act (DTPA), the Texas Insurance Code, that the defendants acted in bad faith, and that Wal-Mart had retaliated against her for filing a workers' compensation claim. Id. at 92-93.

The trial court submitted questions to the jury on plaintiff's DTPA, bad faith insurance, and insurance code claims. The trial court also submitted an issue on attorney's fees. At the charge conference,

Wal-Mart did not object to the question on the ground that such fees are not recoverable under article 8307c as a matter of law. Instead, Wal-Mart specifically requests that the attorney's fee question be submitted with an instruction limiting recovery of attorney's fees to only those fees incurred in connection with the discrimination claim.

Id. at 93.

The jury found no liability on any claims other than the discrimination claim, and it awarded attorneys fees to plaintiff. Wal-Mart then filed a motion for judgment n.o.v. asserting that a plaintiff cannot recover attorneys

fees in a workers' compensation retaliation claim as a matter of law. The trial court entered judgment on the entire award to plaintiff. *Id.* at 93. The Supreme Court determined that attorney's fees were not recoverable as a matter of law, but in doing so, it indicated that the jury's question on the amount of attorney's fees was immaterial and could be disregarded.

The availability of attorney's fees under a particular statute is a question of law for the court. Consequently, the jury's finding about the amount of reasonable attorney's fees is immaterial to the ultimate legal issue of whether such fees are recoverable under former article 8307c as a matter of law. By asserting nonrecoverability in its motion for j.n.o.v., Wal-Mart gave the trial court ample opportunity to rule on the availability of attorney's fees before an erroneous judgment was rendered. This is not a case in which the trial court had to resolve a legal issue before the jury could properly perform its fact-finding role. In such instances, a party must lodge an objection in time for the trial court to make an appropriate ruling without having to order a new trial. . . . *A jury can determine the amount of attorney's fees whether or not they can be recovered under the theory of law submitted to the jury.*

*Id.* at 94.

This case is a perfect example. Question 4 was properly worded to allow the jury to determine the amount of causation attributable to Garlock and each of the settling defendants. There is nothing improper or defective about the wording of that question. But as a matter of Oregon law, the amount of causation is irrelevant; what is relevant is the amount of fault. Because Oregon law does not permit a non-settling defendant to reduce his liability by the amount of causation attributable to other settling defendants, Question 4 is like the attorneys' fees question asked in the Wal-Mart case. In other words, the jury was free to compare Garlock's and the settling defendant's causation even though as a matter of law causation cannot

operate to reduce the Garlock's liability. Therefore, the jury's answer to Question 4 is immaterial and may be disregarded.<sup>3</sup>

If Question No. 4 is disregarded, is a new trial required, or may the Court enter judgment based on the jury's other answers?

Garlock asserts that in the event the Court disregards the jury's answers to Question No. 4, the only remedy available is to grant a new trial. In particular, it argues that "[a]lthough no reason exists to disregard the jury's findings, if the Court were to do so, it could not, as plaintiff argues, merely add the 25% percentage fault of say Celotex to Garlock's 13% and award a judgment accordingly." Garlock's Response to Plaintiff's Motion to Disregard, p. 8. In support of this argument, Garlock cites the case of JHC Ventures, LP, v. Fast Trucking, Inc., 94 S.W.3d 762 (Tex. App. – San Antonio 2002, no pet.). As will be shown below, the present case deals with a different factual scenario than was presented in JHC Ventures, LP v. Fast Trucking, Inc.

In that case, the plaintiff, Fast Trucking, Inc., filed suit against three defendants: JHC Ventures, Hoss Equipment and Gregg Hoss. The jury apportioned fault among the parties as follows: Fast Trucking – 40%; Hoss Equipment – 20%; Gregg Hoss – 30%; and JHC Ventures – 10%. The trial court entered judgment for Plaintiff, holding that

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<sup>3</sup> See also, Preston v. Traders & General Insurance Company, 309 S.W.2d 872, 874 (Tex. Civ. App. – Texarkana 1985, writ ref'd n.r.e.)(Where the plaintiff pleaded and proved a specific injury to his hand, a question asking the jury to determine whether the plaintiff's diminished capacity to work was due solely to an injury to one finger could be disregarded because, as a matter of law, the extent to which an injury diminished the plaintiff's capacity to work was irrelevant in a specific injury case.)

(1) Hoss Equipment, JHC Ventures, and JHC Holding as general partner of JHC Ventures are jointly and severally liable to Fast Trucking for its actual damages in the amount of \$109,500, (2) Gregg Hoss, Hoss Equipment, JHC Ventures, and JHC Holding, as general partner of JHC Ventures, are jointly and severally liable to Fast Trucking for exemplary damages in the amount of \$50,000, (3) Hoss Equipment is solely and separately liable to Fast Trucking for an additional award of exemplary damages in the amount of \$50,000, and (4) Hoss Equipment, JHC Ventures, and JHC Holdings, as general partner of JHC Ventures, are jointly and severally liable to Fast Trucking for its attorney's fees.

Id. at 766.

The court of appeals held that Fast Trucking's claim against Gregg Hoss was barred by the statute of limitations. Id. at 769-70. Accordingly, the apportionment of fault as to Gregg Hoss was improper. Id. Fast Trucking petitioned the court of appeals to recalculate the judgment by omitting the percentage of fault apportioned to Gregg Hoss, but the court of appeals refused. Id. at 773-74.

Here, the jury assigned responsibility to Gregg Hoss when it should not have. We, therefore, cannot be certain that the proportions assigned to Fast Trucking, Hoss Equipment, and JHC Ventures would have been the same if the question had been properly submitted to the jury. As a result, the proper remedy is to remand.

Id. at 774.

Essentially, in JHC Ventures, LP v. Fast Trucking, Inc., a material apportionment issue was submitted to the jury, but it included a defendant who could not legally be liable to the plaintiff. In the present case, a material apportionment issue was never submitted. Accordingly, the court is not presented with an issue of whether the Court may consider *some but not all* of the apportionment percentages, but whether the court may consider *any* of the apportionment percentages. Because Question No. 4 is not

material to this case, the Court may not consider any of the apportionment percentages found by the jury.

By disregarding the entire answer, the Court is not, as Garlock suggests, merely adding back percentages to Garlock's percentage as found by the jury. As noted, the jury found that Garlock caused 13% of the damages, but it never determined how much fault was attributable to Garlock or the other settling defendants. Consequently, the Court is not adding back percentages, but refusing to reduce the damages by percentages which are not material to the case. Essentially, one cannot add back that which was never removed in the first place.

What should be the amount of judgment based  
on the jury's remaining answers?

Nevertheless, merely disregarding the jury's answer to Question No. 4 does not result in a verdict of \$1,292,200.00 for the Plaintiff, because Oregon law caps non-economic damages in wrongful death cases at \$500,000.00. Griest v. Phillips, 906 P.2d 789 (Or. Sup. Ct. 1995). In particular, "ORS 18.560 provides in part:

(1) except for claims subject to ORS 30.260 to 30.300 [the Oregon Tort Claims Act] and ORS chapter 656 [the Oregon Workers' Compensation Act], in any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed \$500,000.

(2) As used in this section:

(a) "Economic damages" means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing, and rehabilitative services, and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary

expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

(b) "Noneconomic damages" means subjective, nonmonetary losses, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment.

Id. at 285.

In the present case, the jury awarded \$35,000.00 for medical expenses and \$7,200.00 for funeral expenses. According to the Oregon statute, these are economic damages. In addition to these damages, the jury awarded \$1 million for past and future "loss of care, comfort, companionship, society, affection, solace, assistance, sexual relations, emotional support, love, and felicity, necessary to sustain a successful marriage," to Plaintiff Claudine Schiller. The jury also awarded \$200,000.00 to Manfred Schiller's estate for past pain and mental anguish. According to the statute, these are non-economic damages. Therefore, pursuant to the statute and case law, Plaintiff is entitled to recover \$43,200.00 for economic damages and \$500,000.00 for non-economic damages.

Consequently, judgment in this case should be rendered for Plaintiff against Defendant Garlock in the amount of \$542,200.00, together with interest and costs of court.

CONCLUSION

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that the Parties' Motions for Mistrial and for New Trial are DENIED.

IT IS FURTHER ORDERED, that the jury's answer to Question No. 4 is DISREGARDED.

IT IS FURTHER ORDERED, that judgment should be entered for Plaintiff against Defendant Garlock in the principal amount of \$542,200.00, together with interest and costs of court.

Plaintiff's counsel is directed to prepare a final judgment consistent with this Order, forward it to Defendant's counsel for review, and then to the Court for signature.

Signed this 11<sup>th</sup> day of August, 2006.

  
Judge Presiding