IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

SOOMI AMAGASU, BOTH INDIVIDUALLY AND AS SPOUSE AND POWER OF ATTORNEY FOR FRANCIS AMAGASU **VS.**	**Case ID:** **181102406**
FRED BEANS FAMILY OF DEALERSHIPS, FRED BEANS FORD, INC., FRED BEANS FORD, INC. d/b/a FRED BEANS FAMILY OF DEALERSHIPS, FRED BEANS KIA OF LIMERICK, FRED BEANS MOTORS OF LIMERICK, INC., FRED BEANS MOTORS OF LIMERICK, INC. d/b/a FRED BEANS KIA OF LIMERICK, MITSUBISHI MOTORS NORTH AMERICA, INC., MITSUBISHI MOTORS CORPORATION	**Superior Court:** **1594 EDA 2024**

1925(a) OPINION

THOMAS STREET, SIERRA, J.

I. FACTS AND PROCEDURAL BACKGROUND

This action arose from a 2017 automobile accident that occurred as Francis Amagasu was driving his 1992 Mitsubishi 3000GT on Pineville Road, in Bucks County, Pennsylvania. Mr. Amagasu attempted to pass another vehicle when he lost control of his car, causing his car to leave the road, encounter three trees and roll over. At the time of the accident, Mr. Amagasu was wearing his seatbelt, which released an additional four inches of slack. The force of the accident, in addition to the seatbelt releasing additional slack, caused Mr. Amagasu to suffer serious injuries when his car rolled to its side and his head hit the roof of his car. He was rendered a quadriplegic, sustaining catastrophic injuries that left him paralyzed from the neck down for the rest of his life. N.T. 10/20/23 a.m., 46:22–25.

Mr. Amagasu, through his wife with power of attorney, Soomi Amagasu (collectively "Plaintiffs"), filed a Complaint on November 20, 2018, against Mitsubishi ("Appellant"), among other defendants. The complaint alleged that the seatbelt in the 1992 Mitsubishi 3000GT was designed, manufactured, and sold with a defect that caused Mr. Amagasu's injuries. Plaintiffs sought both compensatory and punitive damages under a strict liability claim. Plaintiffs claim the reason Mr. Amagasu sustained such severe injuries was due to the since-discontinued "rip stich" design of the seatbelt that was used on the driver's side of the vehicle. N.T. 10/20/23 a.m., 48:1–49:6.

In this design, part of the seatbelt webbing was folded over itself and sewn down such that the stitching was designed to rip during a collision, adding four inches of slack to the seatbelt after a collision occurs. *Id.* Additionally, there was only three inches of clearance between the top of Mr. Amagasu's head and the roof of the car. *Id.* In the process of Mr. Amagasu's accident, the stitching did so rip, adding several inches of slack to the seatbelt on the driver's side. *Id.* With the additional slack introduced when the stitching ripped, and the small amount of head clearance, Mr. Amagasu's head struck the roof of the car upon collision with the final tree. *Id.* Plaintiffs contend that the seatbelt design and lack of clearance were what caused Mr. Amagasu's head to strike the roof, and if this had not occurred, he would not have sustained the severe level of injury that resulted. *Id.* At the time of the accident, Mr. Amagasu's son Toshi was in the front passenger seat. N.T. 10/20/23 p.m., 32:6–17; 46:10–13. His seatbelt did not introduce slack and who had more head clearance due to his shorter height, was able to walk away from the accident with no serious injuries. *Id.*

Trial commenced on October 20, 2023. Appellant Mitsubishi was the only remaining defendant by the time trial began. The trial was bifurcated into a liability phase and a punitive damages phase. On October 30, 2023, the jury returned a unanimous verdict for Plaintiffs and against Appellant. The jury confirmed that it found in Plaintiffs' favor on four alternate theories supporting strict liability: design defect under the consumer expectation test, design defect under the risk-utility test, crashworthiness theory, and failure to warn theory. The jury further found that each individual theory for liability was a factual cause of Mr. Amagasu's harms.

The jury awarded $156,488,384.01 in compensatory damages to Mr. Amagasu, $20,000,000 to Soomi Amagasu for loss of consortium, and $800,000,000 in punitive damages because it found Appellant Mitsubishi's conduct to be "outrageous... malicious, wanton, willful or oppressive, or showed reckless indifference to the interests of others." Plaintiffs' Memorandum in Opposition to Defendant's Motion for Post-Trial Relief, p. 3. The combined total of the damages was just over $975 million.

On November 9, 2023, Appellant filed a Motion for Post-Trial Relief requesting judgment notwithstanding the verdict, a new trial, and/or remittitur on various grounds. After submission of several supporting documents from both parties, a hearing was held on April 2, 2024. This Court denied Appellant's Motion on April 29, 2024, issuing a 13-page Opinion. Delay damages in the amount of $33,481,011.31 were awarded; thereafter, a judgment was entered on the verdict on May 6, 2024, totaling $1,009,969,395.12. Appellant timely filed the instant Appeal on May 28, 2024.

II. ISSUES RAISED ON APPEAL

1. The trial court erred and/or abused its discretion in failing to instruct the jury on the crashworthiness doctrine as required by Pennsylvania law where Plaintiff did not contend that an alleged defect caused the accident but contended that the alleged defect enhanced his injuries by failing to protect him during the crash. The identical failure to issue any crashworthiness instruction in a classic crashworthiness case mandated a new trial in *Colville v. Crown Equip. Corp.*, 809 A.2d 916 (Pa. Super. 2002), *appeal denied*, 829 A.2d 310 (Pa. 2003).

2. The trial court erred/and or abused its discretion in denying Mitsubishi's request for JNOV on Plaintiff's punitive damages claim and in allowing the jury to decide the issue of punitive damages, in the absence of evidence of outrageous, recklessly indifferent, or other conduct sufficient to support a punitive damage claim under Pennsylvania law.

3. The trial court erred in denying Mitsubishi's request for JNOV where Plaintiff failed to prove the elements of a crashworthiness claim, including, but not limited to, a defect in the product, an alternative safer practicable design, and evidence to allow the jury to determine what, if any, injuries had been "enhanced."

4. The trial court erred in denying Mitsubishi's request for JNOV where Plaintiff failed to prove that there is a duty to warn potential purchasers of the risks of injuries from vehicle rollovers or that Mitsubishi's alleged failure to warn caused Mr. Amagasu's injuries, where the evidence established that Mitsubishi provided warnings in its Owner's Manual, and where there is no evidence that Mr. Amagasu ever read the Owner's Manual.

5. The trial court erred and/or abused its discretion in denying Mitsubishi's request for a new trial after the trial court (1) instructed the jury at the liability phase that Mitsubishi's compliance with federal government regulations, and industry standards did not undermine a finding of product defect, and (2) refused to instruct the jury at the punitive damages phase that compliance with such regulations and standards could negate the required elements for punitive damages and could be considered by the jury as it decided whether to award such damages.

6. The trial court erred and/or abused its discretion in failing to substantially reduce the punitive damages verdict where there was no evidence of conduct warranting punitive damages, the award is unconstitutionally excessive, and the jury had already punished

Mitsubishi with its shocking $176.5 million compensatory award.

7. The trial court erred and/or abused its discretion in denying Mitsubishi's request for a new trial on the ground that the verdict was the product of passion or prejudice by the jury, which was caused in whole or in part by Plaintiff's inflammatory statements in their closing argument and is indicated by the brevity of the jury's deliberations.

8. The trial court erred and/or abused its discretion in failing to substantially reduce the compensatory award of $176.5 million where such award is excessive, conscience-shocking, an outlier compared to other Pennsylvania compensatory damages awards, motivated by undue passion and prejudice, and clearly punitive.

III. DISCUSSION

Appellant's claims focus primarily on three issues: A) Judgment Notwithstanding the Verdict ("JNOV"), B) New Trial, and C) Remittitur.[1]

A) Judgment Notwithstanding the Verdict ("JNOV")

Appellant's second, third, and fourth issues raised in the 1925(b) Statement all focus on alleged error by the court in not granting JNOV for various reasons. According to *Birth Ctr. V. St. Paul Companies, Inc.*, in reviewing the propriety of an Order granting or denying JNOV, one must primarily determine whether there was sufficient competent evidence to sustain the verdict. 87 A.2d 376 (Pa. 2001). Even if the Court disagrees with a verdict, it may not grant a Motion for JNOV merely because it would have come to a different conclusion; the verdict must stand unless there is no legal basis for it. *See Birth Center*, 7878 A.2d at 383.

Punitive Damages

In the second issue, Appellant claims that the Court erred in denying the request for JNOV on the punitive damages claim. Appellant believes that it was in error that the Court let

[1] The first matter to address is that of the introduction to Appellant's 1925(b) Statement. Appellant alleges that the Court did not provide an opinion explaining its decision, and thus invoked Pa.R.A.P. 1925(b)(4)(vi), allowing general terms to be used for the Statement without constituting waiver of any issues. However, the Court issued a 13-page Opinion attached to the Order in question on April 29, 2024, addressing each of the errors alleged in the instant Appeal.

the jury decide the issue of punitive damages, allegedly absent evidence of the requisite conduct to justify punitive damages claims.

In *Hutchinson ex rel. Hutchinson v. Luddy*, the Pennsylvania Supreme Court held that punitive damages may be awarded only in cases where the defendant's conduct was malicious, wanton, willful, oppressive, exhibited an evil motive, or showed reckless indifference to the rights of others. 784 A.2d 1277 (Pa. 2001). Under Pennsylvania law, punitive damages must be reasonably related to the state's interest in punishing and deterring the bad behavior of the defendant, and they must not be arbitrary. *Empire Trucking Co. v. Reading Anthracite Coal Vo.*, 71 A.3d 923 (Pa. Super. 2013). In determining whether punitive damages are permitted, courts will review the character of the act, the nature and extent of the harm caused, and the wealth of the defendant. *Id*; *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

In this case, the relevant factors point towards the legitimacy of the jury's decision to award punitive damages. The jury found, based on evidence provided at trial, that Appellant's conduct was malicious, wanton, willful, oppressive, exhibited an evil motive, or showed reckless indifference to the rights of others. The jury made that determination in part considering Plaintiffs' expert witness, Larry Sicher's, testimony. Sicher asserted that a rollover crash, the kind of crash Mr. Amagasu endured, was a foreseeable event by Appellant because it is a common type of car accident and was even referenced in the car's manual. N.T. 10/20/23 p.m., 56:24–59:6. Despite this known, foreseeable risk, Appellant conducted no testing for rollover crashes using this seatbelt design. N.T. 10/20/23 a.m., 63:15–64:10; N.T. 10/20/23 p.m., 23:9–10.

Appellant claimed that part of the reason for the design choices it made, including the seatbelt design at issue, was because the 1992 Mitsubishi 3000GT was made during a

"transition period" for safety designs. N.T. 10/20/23 a.m., 70:14–19. Sicher testified that transition periods should trigger extra testing—not less—and the failure to conduct any rollover tests was "very egregious" under the circumstances. N.T. 10/20/23 p.m., 12:4–16; 76:17–78:12. He also highlighted that other car manufacturers were conducting rollover tests in the same time frame. *Id.* The lack of testing for rollover crashes, despite it being common practice to do so, and such crashes being a known, foreseeable risk, was evidence presented to the jury, which they could consider in deciding to award punitive damages.

Furthermore, the nature and extent of the harm caused was severe. Appellant's lack of testing is what allowed the defective design to be put into production, which then led to Mr. Amagasu's catastrophic injury that rendered him permanently paralyzed and in need of lifelong care. N.T. 10/20/32 p.m., 57:8–10; 76:20–25; N.T. 10/20/32 a.m., 57:9–21. Finally, Appellant Mitsubishi is a wealthy corporation, which has been explicitly stated as relevant to the determination of punitive damages. *Empire Trucking Co.*, 71 A.3d at 938–39.

The jury found that the combination of this evidence was sufficient to support a finding that Appellant's conduct was "malicious, wanton, willful, oppressive, exhibited an evil motive, or showed reckless indifference to the rights of others" such that punitive damages were appropriate. *Hutchinson*, 784 A.2d 1277 (Pa. 2001). The jury was offered evidence related to all three factors of punitive damages. Recalling that the verdict must stand unless there is no legal basis for it, JNOV is not appropriate on the issue of punitive damages. *Birth Center*, 7878 A.2d at 383.

Crashworthiness; Design Defect Claim

According to Appellant, Plaintiffs raised crashworthiness as the only theory of liability and, as they allegedly did not satisfy the three necessary elements. However, Plaintiffs'

Fourth Amended Complaint, filed on June 5, 2019, listed Count 1 as a Strict Liability Claim. Within Count 1, and Plaintiffs explicitly did not limit themselves to any one theory of liability under the strict liability umbrella and spoke to multiple theories at trial.[2] Moreover, all three elements of crashworthiness were addressed at trial.

The three elements of a crashworthiness claim are: (1) the design was defective and, at the time the design was made, there was an alternative, safer, and practicable design; (2) Plaintiff must identify the injuries they would have received if the alternative design were used instead of the defective design; and (3) Plaintiff must demonstrate what injuries were attributable to the defective design. *Gaudio v. Ford Motor Co.*, 976 A.2d 524, 532 (Pa. Super. 2009). First, through witness and physical belt systems demonstrations, Plaintiffs showed that the seatbelt design was defective and that there were safer, alternative designs available. Witnesses, including Plaintiff's expert, Larry Sicher, asserted repeatedly that introducing four inches of slack into a vehicle that Appellant was aware only had three inches of head clearance was defective and unreasonably dangerous. N.T., 10/20/23 p.m., p. 23:1–28:13; 32:5–33:3. Sicher offered alternative designs, such as removing extra cushion from the seat and lowering the seat, that would have provided additional head clearance to reduce risk of injury. N.T., 10/20/23 p.m., 81:8–85:23. Ultimately, Sicher noted that the best alternative design was a seatbelt without the web loop design, which was responsible for producing the slack in the seatbelt during Mr. Amagasu's accident. N.T., 10/20/23 p.m., p. 123:13–14. Another expert witness, Dr. Van Arsdale, also noted that most cars sold in 1992, the year Mr. Amagasu's car was manufactured, were made without the web loop design; therefore, the design alternative posed by the expert witness was not

[2] Each theory could serve as an alternate basis for upholding the verdict and support liability independently, even the others were found defective. Therefore, the Court would have had to find that the evidence was defective on *all* theories to properly grant JNOV.

just a mere concept, but a real, practicable option for vehicles at that time. N.T. 10/27/23 p.m., 72:2-9; see also N.T. 10/20/23 p.m., 110:24-111:5.

The second element of crashworthiness requires Plaintiff show what injuries, if any, they would have received had the alternative safer design been used. *Gaudio*, 976 A.2d at 532. The third element, relatedly, requires showing what injuries were attributable to the defective design. *Id.* Sicher proffered further expert opinion testimony asserting that eliminating the four inches of slack from the seatbelt, along with having additional headroom, would have prevented Mr. Amagasu from striking his head against the roof. N.T. 10/20/23 p.m., 108:22-111:5. Dr. Ronald Fijalkowski, an expert in biomechanical engineering, confirmed that Mr. Amagasu would not have suffered a paralyzing injury had his head not hit the roof of the car during the accident, and that said contact with the roof was caused by the slack in the seatbelt, as designed by Appellant. N.T. 10/23/23 p.m., 42:3-43:25. Additionally, Sicher clearly described the results of multiple tests that showed that the alternative design would prevent head and neck injuries of the degree of severity that Mr. Amagasu experienced. N.T. 10/20/23 p.m., 83:11-86:20; 93:9-97:23; 106:5-111:4. For example, it was implied that if the safer design were implemented, Mr. Amagasu would have fared similarly to his son, Toshi. The passenger side seatbelt did not extend or provide slack upon collision, and his son had more headroom due to his shorter height. N.T. 10/20/23 p.m., 32:6-17. As a result, Toshi was able to walk away from the accident with no serious injuries. N.T. 10/20/23 p.m., 32:6-17; 46:10-13. Ultimately, expert opinion testimony showed that Mr. Amagasu's injuries would have been less severe if the safer

design had been used, and the severe, paralyzing injury that he suffered was attributable to the defective seatbelt design.

The jury heard evidence during trial related to all three elements of a crashworthiness claim. Further, the Court made edits to the verdict slip to make sure the jury clearly understood and responded to the claims raised. Question 1 on the verdict sheet included the language of "unreasonably dangerous" regarding design defects, over Plaintiffs' objection, to address concerns raised by Appellant about crashworthiness. Question 2 on the verdict slip asked whether there was an alternative design that was safer and practicable, also related to the crashworthiness doctrine. The jurors affirmed in both instances based on the evidence described above. Keeping in mind the standard for JNOV, the Court found that the jury decided upon sufficient evidence to uphold the verdict and deny Appellant's claim. *Birth Ctr. V. St. Paul Companies, Inc.*, 87 A.2d 376, 383 (Pa. 2001).

Warning Claim

Appellant alleges that Plaintiffs failed to prove that there is a duty to warn potential purchasers of the risks of injuries from rollovers, or that Appellant's alleged failure to warn caused Mr. Amagasu's injuries—which would preclude liability under the theory of warning defect. For Appellant to properly be found strictly liable for failure to warn about inherent dangers in a product, Plaintiffs must establish: (1) that the lack of warning (or inadequate warning) rendered the product "defective" and "unreasonably dangerous;" and (2) that the deficient warnings were the cause-in-fact of the Plaintiff's injuries. *Phillips v. A-Best Prods. Co.*, 6 A.2d 1167 (Pa. 1995). Specifically, the Plaintiff must prove that the risk would have been avoided if the warning had been sufficient. *Id.*

Appellant argued that, as a threshold issue, it had no duty to warn because the risk of injury in a rollover accident is obvious and widely known, meaning that a specific warning

is unnecessary because of the general public's knowledge of obvious conditions. However, this assertion is predicated on its assumption that Plaintiffs "failed to establish that Mitsubishi's vehicle presented a heightened, latent danger above [the] widely-known risks" and "offered no evidence that Mitsubishi's restraint system was any less safe, or differed in any way, from the majority of seatbelts on the market." Defendant Mitsubishi Motors Noth America Inc.'s brief in Support of Motion for Post-Trial Relief, p.63. As detailed above, testimony from Mr. Sicher supported a finding that the rip-stitch design increased the risk of severe head and neck injury compared to a more typical seatbelt design in the rollover accident Mr. Amagasu experienced. Therefore, because the risk of severe injury was increased by the design, beyond what would typically be expected in a rollover crash, it is not an obvious condition that relieves Appellant Mitsubishi of the duty to warn.

Sicher also noted that the rip-stitch design contradicts the warnings that Appellant Mitsubishi did provide. N.T. 10/20/23 p.m., 48:16-49:19; 73:9-74:15. The only warning that concerned seatbelts was that it should be worn low and snug, and that it should be replaced after it has been deployed. N.T. 10/20/23 p.m., 48:16-49:19; 70:6-16. But a seatbelt that is designed to extend upon collision will NOT remain snug on the occupant, and a seatbelt cannot be replaced, mid-crash, when there are multiple points of collision. Even if the general risk of injury in this type of accident is well-known, consumers would not find it obvious that the seatbelt design would not only heighten a risk of injury but do so in direct contradiction to warnings provided in the Owner's Manual. See N.T. 10/20/23 p.m., 33:5-7; N.T. 10/25/23 p.m., 62:4-7.

In this case, Plaintiffs argued that the warnings provided by Appellant Mitsubishi in the Owner's Manual were inadequate. Appellant provided no evidence that said manual included any specific warnings that would speak to the incident at issue. Again, the only

warning that concerned seatbelts was that it should be worn low and snug, and that it should be replaced after it has been deployed. N.T. 10/20/23 p.m., 48:16–49:19; 70:6–16. Additionally, the small amount of headroom meant that all individuals above five feet, nine inches in height[3] were at the same increased risk that Mr. Amagasu faced because of the seatbelt design. N.T. 10/20/23 p.m., 111:8–112:25. There was no warning that the seatbelt had not been tested for a rollover accident, no instructions or warning on how the design works in a rollover accident, no warning about the increased risk of injury when slack is introduced in a collision, and no warning of the increased risk of injury based on the driver's height. N.T. 10/20/23 p.m., 111:6–117:2. The jury determined that, based on this evidence, the warnings in the Owner's Manual were "unreasonably dangerous" such that it rendered the warnings "defective." *Phillips v. A-Best Prods. Co.*, 6 A.2d 1167 (Pa. 1995).

Plaintiffs also had to show that the deficient warnings were the cause-in-fact of the injuries, such that the risk would have been avoided if the warning had been sufficient. *Phillips v. A-Best Prods. Co.*, 6 A.2d 1167 (Pa. 1995). Mr. Amagasu specifically testified that if he had known earlier about the seatbelt design and the risks that it posed, he would not have purchased the car. N.T. 10/25/23 p.m., 63:4–64:8. If he had chosen not to purchase the car because of the warnings, he would not have been injured—therefore, his testimony indicates that the lack of warning was the cause-in-fact of his injury, and a sufficient warning would have avoided the risk of injury. *Id.* Appellant conducted no cross-examination about warnings, nor did it bring forward any other evidence to contradict Plaintiff's testimony.

Again, a Court may enter JNOV only where "the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of

[3] Which, as Mr. Sicher noted, includes almost half of the male population. N.T. 10/20/23 p.m., 112:6–9.

the movant" and "[t]he verdict must stand unless there is no legal basis for it." *Wenrick v. Schloemann-Siemag Aktiengesellschaft*, 564 A.2d 1244 (Pa. 1989); *Birth Ctr. V. St. Paul Companies, Inc.*, 87 A.2d 376, 383 (Pa. 2001). Appellant did raise the argument that Plaintiffs did not provide evidence to support that Mr. Amagasu read the Owner's Manual, raising some doubt as to the cause-in-fact issue. However, there was still sufficient evidence to support the finding of a warning defect such that the Court found it appropriate to uphold the jury verdict in the face of this strict standard.

B) <u>New Trial</u>

Appellant's first, fifth and seventh issues raised on appeal argue that this Court erred in not granting a new trial on the grounds raised in Appellant's Post-Trial Motion. Trial courts have broad discretion to grant or deny a new trial based on the fairness of the result. *Bey v. Sacks*, 789 A.2d 232 (Pa. Super. 2001). However, "a new trial is not justified simply because an irregularity occurred at trial, or a different judge would have ruled differently." *Id.* The trial court must first decide whether a mistake (or mistakes) occurred at trial surrounding factual, legal, or discretionary matters. *See Spang & Co. v. U.S. Steel Corp.*, 545 A.2d 861, 868 (Pa. 1988); *Steltz v. Myers*, 265 A.3d 335 (Pa. 2021). Then, if the trial court determines that such a mistake has been made, it must determine whether the mistake prejudiced the moving party such that it creates a sufficient basis for granting a new trial. *Id.* Under the harmless error doctrine, the moving party must demonstrate that it has suffered prejudice from the mistake for a new trial to be warranted. *See Harman ex rel. Harman v. Borah*, 756 A.3d 1116, 1122 (Pa. 2000).

<u>"Passion or Prejudice" of the Jury</u>

Appellant's seventh issue raised on appeal argues that the Court erred in not granting a new trial due to the alleged influence of passion or prejudice by the jury, caused

by Plaintiffs' allegedly inflammatory statements in their closing argument. The grant of a motion for mistrial is appropriate where "the cumulative effect of improper remarks so prejudices the jury as to prevent a fair trial." *Commonwealth v. Baranyai*, 442 A.2d 800, 803 (Pa. Super. 1982). If that motion for mistrial is denied due an abuse of discretion by the trial court, a new trial is proper relief. *Poust v. Hylton*, 940 A.2d 380, 387 (Pa. Super. 2007). Under the harmless error doctrine, the moving party must demonstrate that it has suffered prejudice from the mistake for a new trial to be warranted. *See Harman ex rel. Harman v. Borah*, 756 A.3d 1116, 1122 (Pa. 2000).

Appellants requested that the Court declare a mistrial based on the tone taken by Plaintiffs' counsel during the closing argument, which was denied. Despite claiming that the closing was so inflammatory that it warrants a new trial, Appellant made only one objection during the closing argument, which was ultimately sustained. N.T. 10/30/23, 80:20–81:1; 90:10–92:13. The Court sustained the objection based on the aggressive tone of the closing argument, which came across as even stronger in tone because of the contrast to Appellant's conservative litigation style. However, during the trial, the Court noted and advised the Plaintiffs to watch their tone and mannerisms. Additionally, although the Court advised Plaintiff's counsel on argument style due to Appellant's objection, and sustained Appellant's objection due to the contrast that contributed to the aggressive tone—the Court notes that Plaintiff's tone in isolation was not wholly inappropriate in a case involving a catastrophic injury. The context and contrast were the factors that influenced the Court's decision on this matter; the statements made, and the tone taken, by Plaintiffs' counsel were not inherently improper.

Furthermore, Appellant did not request that the Court issue curative instructions to address its concerns about the closing argument while it could have been addressed, and

there is no evidence that anything said during the closing argument caused prejudice to Appellant, as now claimed. Therefore, because the Court corrected the issue in real time and Appellant did not show that the closing argument specifically caused prejudice, allowing the statements made during the closing arguments fall within the harmless error doctrine and did not warrant granting a new trial.

Jury Instructions

Appellant's first and fifth issues raised on Appeal alleges that the Court erred in failing to grant a new trial based on the following claims: failure to instruct the jury on the elements of crashworthiness; incorrect instructions regarding safety regulations and industry standards; and refusal to include instructions about the same during the punitive damages phase.

Rule 647 controls a Judge's charge to the jury. Under this rule, any party may submit written requests for instructions to the jury. 234 Pa. Code 647(B). For a party to allege that there was an error in the instructions, specific objections must have been raised before the jury retires to deliberate. 234 Pa. Code 647(C). After the jury has retired to consider its verdict, the judge may issue additional or correctional instructions if necessary. 234 Pa. Code 647(D). "When a challenge is made to the jury instructions, the appellate court must look at the charge in its entirety, against the background of evidence in the case, to determine whether an error of law was committed and whether prejudice resulted." *Com., Dep't of Transp. V. Patton*, 686 A.2d 1302, 1305 (Pa. 1997). In reviewing the propriety of the refusal of a new trial, the appellate court's inquiry is whether the court below abused its

discretion or committed an error of law that prejudiced the outcome of the case. *See Harman ex rel. Harman v. Borah*, 756 A.3d 1116, 1122 (Pa. 2000).

First, Appellant argues that the Court relieved Plaintiffs of the burden of proving the elements of a crashworthiness claim by omitting the second paragraph of the relevant standard instruction. While Appellant did oppose the Plaintiff's version of standard jury instructions 16.10, 16.2, and 16.70, the objection was to the use of standard jury charges—not the omission of the second paragraph as now argued—thereby failing to timely bring the issue to the Court's attention. N.T. 10/27/23 a.m., 82:3–94:3. Appellant's only objection to Plaintiff's version was that it did not include the nonstandard language about the three elements of crashworthiness that Appellant sought to include. *Id.* There was no error in denying a new trial because Appellant failed to make this specific objection prior to jury deliberations. *See* Rule 647(C). Moreover, Appellant's own proposed instruction omitted the same language it now claims should have been read to the jury. Additionally, the Court adopted Appellant's proposed verdict slip and inserted the term "unreasonably dangerous" into Question 1 as a compromise, at Appellant's request and over Plaintiff's objection. N.T., 10/27/23, p. 82–87. The Court made a proper ruling to simply use the standard instructions and was not required to adopt Appellant's proposed nonstandard jury instructions.

Next, Appellants use the *Tincher* case to assert that inclusion of the consumer expectation standard in the jury instruction was inappropriate based on a classification of the seatbelt as a complex design. *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014). However, this case specifies that crashworthiness claims are distinct from typical strict liability design defect claims, and that the designation of complex design only applies to crashworthiness claims. *Id.* The *Tincher* Court, in so deciding, did not preclude seatbelt

design defects from being pursued under typical strict liability; it instead maintained both crashworthiness and traditional strict liability as alternative claims. *Id.* Using the strict liability framework, a composite test that incorporates both consumer expectation and/or risk-utility tests is proper. *Id.* Therefore, for a typical strict liability claim, it is not improper to include instruction on the consumer expectation test.

Plaintiffs were clear on the theories of liability they sought to pursue against Appellant. In the Fourth Amended Complaint, filed June 9, 2019, Count I stated that Plaintiffs were filing a Strict Liability Claim against Appellant (among other defendants). Plaintiffs proceeded on the Complaint that explicitly did *not* limit them to a crashworthiness theory of liability. The verdict slip was created to address all three potential theories of strict liability for a design defect: consumer expectations, risk-utility, and crashworthiness. Question 1 on the verdict slip spoke to the design defect and included the language "unreasonably dangerous" (speaking to crashworthiness) and asked whether the design was defected under *either* the consumer expectation standard *or* the risk-utility standard. Therefore, the jury instruction and verdict slip addressed three separate theories of liability that are all properly pursued under *Tincher*.

Appellant argues that the Court erred in failing to define the term "unreasonably dangerous" in the jury instruction despite it appearing on the verdict slip. In general, courts must define legal terms of art when a lay jury member would not understand the meaning as applied in a legal context. *Commonwealth v. Clark*, 683 A.2d 901, 906 (Pa. Super. 1996). However, the Court determined that the phrase "unreasonably dangerous" was used as per its ordinary meaning, so it was not beyond the comprehension of typical jurors. Alternatively, if one were to accept that "unreasonably dangerous" had a specialized meaning in this context, the Court provided information that aided lay jurors in understanding its meaning.

The *Tincher* decision established that a product qualifies as unreasonably dangerous if it fails to satisfy either the consumer expectation test or the risk-utility test. *Tincher*, 104 A.3d 328. The Court instructed the jury on both tests, and in the verdict slip, contextualized the term at issue by including: "...unreasonably dangerous and therefore defectively designed under **EITHER** the consumer expectation standard **OR** the risk-utility standard?" (emphasis in original). In this way, the Court specified that "unreasonably dangerous" means "failed either of the two tests described," which is a clear, unambiguous meaning to a typical juror.

Finally, Appellant argues that the Court erred in its jury instructions regarding federal regulations and industry standards. First, it claims that the Court erred by instructing the jury that compliance with regulations and standards did not undermine a finding of product defect at the liability stage of the proceedings. This is plainly not in error. Compliance with government regulations, industry standards, and customs does not mean that the product is not defective. *See Sullivan v. Werner Co.*, 306 A.3d 846, 862 (Pa. 2023)). In fact, Pennsylvania law generally finds evidence of compliance with industry standards to be inadmissible in strict liability cases. *Gaudio v. Ford Motor Co.*, 976 A.2d 524, 532 (Pa. Super. 2009) (citing *Lewis v. Coffing Hoist Division, Duff–Norton Company, Inc.*, 528 A.2d 590 (Pa. 1987)). *Sullivan v. Werner Co.* (2021), a case Appellant cited as providing a narrow exception to the rule, has since been revisited and the Pennsylvania Supreme Court reaffirmed the general inadmissibility of government and industry standards. *Sullivan v. Werner Co.*, 253 A.3d 730 (Pa. Super. 2021*); Sullivan v. Werner Co.*, 306 A.3d 846 (Pa. 2023)). Therefore, the Court correctly stated the law in the jury instruction.

Appellant also claims that the Court erred in not instructing the jury that compliance could negate necessary elements for punitive damages. This is, similarly, an incorrect statement of the law. Appellant cited *Nigro v. Remington Arms Co.* to assert that compliance

can negate an inference of the "wanton indifference" relevant to punitive damages. 637 A.2d 983 (Pa. Super. 1993). However, that case further clarified that it only made evidence of compliance material and admissible regarding punitive damages; it imposed no obligation for the trial court to instruct the jury on that evidence. *See id.* The Court has broad discretion to decide on how to instruct the jury, especially when it comes to the evaluation of specific pieces of evidence. *See Commonwealth v. Brown*, 911 A.2d 576, 583 (Pa. Super. 2006). Appellant was able to enter relevant evidence about the government and industry standards, and the jury was able to consider it. The choice of instruction was within the Court's discretion.

Additional Claims

Appellant suggests that multiple issues raised in its Post-Trial Motion, and not in the 1925(B) Statement of Appeals, are not waived. This Court disagrees but will address these claims, as well. [4]

First, Appellant argues that the Court abused its discretion by permitting Mr. Amagasu to speculate about what he would have done if the warning in the Owner's Manual had been different. Then, it argues that it was an abuse of discretion for the Court to allow expert Larry Sicher to allegedly testify beyond his area of expertise. Last, Appellant argues that the verdict was contrary to the weight of the evidence. Courts are permitted to grant a new trial on an evidentiary ruling when there was improperly admitted or improperly excluded evidence. *Hutchinson v. Penske Truck Leasing Co.*, 876 A.2d 978, 984 (Pa. Super. 2005); *Salameh v. Spossey*, 731 A.2d 649, 658 (Pa. Commw. Ct. 1999). Evidentiary

[4] Appellant invoked Pa.R.A.P. 1925(b)(4)(v)-(vi), claiming that the Court's alleged failure to explain its decision precludes waiver of issues based on generality in the Statement, and claiming that all issues raised in the Statement are "deemed to include every subsidiary issue contained therein which was raised in [this] [C]ourt." As stated above in Footnote 1, this Court did indeed explain its decision in a 13-page Opinion.

decisions on appeal amount to reversable error only if there was an abuse of discretion. *Whiteaker v. Frankford Hosp.*, 984 A.2d 512, 522 (Pa. Super. 2009). Abuse of discretion is more than a mere error in judgment; it occurs only in cases where "the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record." *Poust v. Hylton*, 940 A.2d 380, 382 (Pa. Super. 2007). Furthermore, the moving party must show that the evidentiary error resulted in prejudice for it to warrant a new trial. *See Harman ex rel. Harman v. Borah*, 756 A.3d 1116, 1122 (Pa. 2000).

Appellant claims that the Court erred in allowing Mr. Amagasu to testify about what he would have done if the warning in the Owner's Manual had been different. Mr. Amagasu's testimony was that, if he had been warned about the risks described throughout the trial, he would not have purchased the car and, thus, would not have sustained his injuries. N.T. 10/25/23 p.m., 63:4–64:8. Case law for a warning defect calls for the Plaintiff to show that that the deficient warnings were the cause-in-fact of their injuries, such that the risk would have been avoided *if* the warning had been sufficient. *Phillips v. A-Best Prods. Co.*, 6 A.2d 1167 (Pa. 1995). Additionally, in the Post-Trial Motion, Appellant combined the argument about speculation with a claim that that Mr. Amagasu's testimony was inadmissible because there was not proper foundation laid that he had actually read the Owner's Manual.[5] However, the only objection raised during trial was that the questions asked by Plaintiffs' counsel called for speculation. N.T. 10/25/23 p.m. 62:9–64:8. If no objection is made, error which could have been corrected in pre-trial proceedings or during trial by timely objection may not constitute a ground for post-trial relief. 231 Pa. Code § 227.1, Comment. Because

[5] The Court notes that Appellant did not take the opportunity to cross-examine Mr. Amagasu and put on the record a clear statement of whether he read the Owner's Manual.

Appellant only objected as to speculation—not foundation—at trial, the argument as to the lack of foundation rendering Mr. Amagasu's testimony inadmissible is thus waived. See *id.*

Next, Appellant argues that it was an abuse of discretion for the Court to allow expert Larry Sicher to allegedly testify beyond his area of expertise. Sicher, a mechanical engineer, "investigate[s] car crashes, essentially looking at the occupant protection systems for adults and children in cars"—including seats and seatbelts. N.T. 10/20/23 p.m., 5:9–6:21. He was brought to testify as an "expert in the field of occupant restraint design and failure analysis" without objection from Appellant. N.T. 10/20/23 p.m., 22:8–11. Appellant objected to Sicher's testimony at trial when described the effect of alternative designs on the cause or risk of injury, arguing that he exceeded the scope of his expertise by testifying about how a neck injury may occur as a design expert rather than a biomechanical engineer.

Sicher noted that he has worked in a position focused primarily on analyzing car crashes and measures to protect people who experience them for over 25 years. N.T. 10/20/23 p.m., 5:7–22:14. As an engineer that focuses on "occupant restraint design and failure analysis," analysis of injuries is inherently related to his work—a successful restraint design prevents or reduces injuries in a car crash by protecting the occupant's body from the forces of physics, and failure analysis includes looking into why the restraint failed to protect the occupant, leading to injury. See *id.* Sicher testified as to the physics of his proposed alternative design and testified that said design would have prevented Mr. Amagasu's head from striking the roof of the car. N.T. 10/20/23 p.m., 81:15–86:20. He further testified that if Mr. Amagasu's head had not struck the roof the way it did, he would not have sustained the same injuries—an opinion informed by additional testing related to vehicle restraint

systems, described in detail before the Court.[6] N.T. 10/20/23 p.m., 84:18–97:23. The Court did not abuse its discretion by allowing an expert to testify based on a test that he was familiar with and was related to his expertise in "occupant restraint design and failure analysis."

Finally, Appellant argues that the verdict rendered by the jury was, overall, against the weight of the evidence. According to Rule 607, a claim that the verdict was against the weight of the evidence can be raised in a motion for new trial within a Post-Trial Motion. Courts generally hesitate to overturn factual findings based on credible determinations by a jury and will only do so in rare circumstances. *Armbruster v. Horowitz*, 744 A.2d 285 (Pa. Super. 1999). According to the Court in *Mammoccio v. 1818 Market Partnership*, "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." 734 A.2d 23, 28 (Pa. Super. 1999). Based on the evidence presented during trial, and for the reasons explained throughout this Opinion, a finding for Plaintiffs is not so contrary to the evidence that it would shock one's conscience, and a new trial is not appropriate based on weight of the evidence.

C) <u>Remittitur</u>

Appellant's sixth and eighth issues raised on appeal argue that the Court erred in not granting remittitur based on the allegedly excessive compensatory and punitive damages awards. "A remittitur should fix the highest amount any jury could properly award, giving due

[6] The CAPE test, as explained by Mr. Sicher, measured the forces experienced by a test dummy in a simulated rollover crash with different seatbelt designs. The results can be compared to existing data on injuries to determine what level of force is likely to cause an injury. Sicher specifically testified that there is not necessarily an injury every time an occupant's head makes contact with the car. However, the level of force experienced when the seatbelt does not keep the occupant close enough to the seat creates results consistent with severe injury. N.T. 10/20/23 p.m., 84:18–97:23.

weight to all the evidence offered." *Cashdollar v. Mercy Hospital of Pittsburgh*, 595 A.2d 70, 76 (Pa. 1991). According to *Renna v. Schadt*, 64 A.3d 658, 671 (Pa. 2013), "judicial reduction of a jury award is appropriate only when the award is plainly excessive and exorbitant." *Rettger v. UPMC Shadyside*, 991 A.2d 915, 932 (Pa. Super. 2010) (quoting *Potochnick v. Perry*, 861 A.2d 277, 285 (Pa. Super. 2004)). "The question is whether the award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the sense of justice as to suggest the jury was influenced by partiality, prejudice, mistake, or corruption." *Id.* Furthermore, "[t]he decision to grant or deny remittitur is within the sole discretion of the trial court and will be overturned only if the trial court abused its discretion or committed an error of law in evaluating a party's request for remittitur." *Id.*

Compensatory Damages

The jury awarded compensatory damages consistent with the testimony of Mr. Bunin, who provided guidance on appropriate economic damages for future medical expenses, past loss of earnings, and future loss of earning capacity. N.T. 10/30/23, 25:9–30:1. The jury's award for past medical expenses was consistent with the amount that the parties had previously stipulated. N.T. 10/25/23 a.m., 56:7–13. The non-economic damages that the jury awarded Mr. Amagasu amounted to approximately $5 million per year since Mr. Amagasu's injury, and $5 million for each year of his remaining life expectancy of 24 years. N.T. 10/30/23, 27:2–30:1; Plaintiffs' Memorandum in Opposition to Defendant's Motion for Post-Trial Relief, p. 63–64. Mr. Amagasu testified extensively as to pain and suffering, embarrassment and humiliation, loss of ability to enjoy the pleasures of life, and disfigurement that his injuries caused. N.T. 10/25/23 p.m., 46:21–68:5; see Pa.R.C.P.

223.3 (listing permissible non-economic damages). Testimony from both Plaintiffs also described how severely Mr. Amagasu's injuries affected his family life—supporting the award of $20 million in past and future loss of consortium to Mr. Amagasu's wife. N.T. 10/24/23 p.m., 104:6-115:17; N.T. 10/25/23 p.m., 46:21-68:5; N.T. 10/30/23, 27-30.

Furthermore, Appellant conducted a limited cross-examination of Royal Bunin, one of three witnesses that Plaintiffs called to testify regarding damages. N.T. 10/25/23 a.m., 75:8-85:24. Appellant did not call any dual experts about damages. Therefore, all categories of the jury's compensatory damages award were supported by testimonial evidence, and considering the true severity of Mr. Amagasu's injuries, the monetary award was not "plainly excessive and exorbitant." *Rettger v. UPMC Shadyside*, 991 A.2d 915, 932 (Pa. Super. 2010).

Punitive Damages

In *Hutchinson ex rel. Hutchinson v. Luddy*, the Pennsylvania Supreme Court held that punitive damages may be awarded in cases where the defendant's conduct was malicious, wanton, willful, oppressive, exhibited an evil motive, or showed reckless indifference to the rights of others. 784 A.2d 1277 (Pa. 2001). Under Pennsylvania law, punitive damages must be reasonably related to the state's interest in punishing and deterring the bad behavior of the defendant, and they must not be arbitrary. *Empire Trucking Co. v. Reading Anthracite Coal Vo.*, 71 A.3d 923 (Pa. Super. 2013). As discussed above, the jury in the instant matter found that Appellant's conduct warranted punitive damages based on evidence presented at trial.

However, the amount allowed in a punitive damages award is not unlimited. The Supreme Court in *Pacific Life Insurance Company v. Haslip* held that an award of excessive

punitive damages violates the 14th Amendment Due Process clause. 499 U.S. 1 (1991). Excessive punitive damages are not explicitly defined, but generally, double-digit multipliers of the compensatory award are considered excessive. *State Farm*, 538 U.S. at 425. However, excessiveness is analyzed on a case-by-case basis, and several factors besides the numerical value can be taken into account. *Id.*; *Haslip*, 499 U.S. 1 at 18–19 ("We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case."). A fact-intensive and case-specific analysis is required when assessing challenges to punitive damage awards. According to the U.S. Supreme Court in *State Farm Mut. Auto. Ins. Co. v. Campbell*, the following factors should be considered: (1) The degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the (3) punitive damages award; and (4) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. 538 U.S. 408, 418 (2003). Both the U.S. and the Pennsylvania Supreme Courts have emphasized that a case-sensitive analysis is required, as "the guideposts and factors do not operate mechanically because the facts and circumstances of each case are determinative of a punitive damages award." *Bert Co. v. Turk*, 298 A.3d 62 (Pa. 2023).

For the reasons explained above, the jury determined that the seatbelt in question was defective by design and dismissed Appellant's claims of no fault. The jury further determined, based on sufficient evidence, that Appellant's conduct was sufficiently wrongful to award punitive damages. The punitive damages totaled approximately 4.53 times that of the compensatory damages, not a double-digit multiplier. Considering the severity of the injury suffered by Plaintiff Francis Amagasu, due to a defect in a product that is supposed to provide protection from injury, the jury's verdict against Appellant and the damages awarded

to Plaintiffs correspond with and properly reflect its analysis of the facts presented at trial. Consequently, the Court determined that the punitive damages award imposed by the jury should not be disturbed.

IV. CONCLUSION

For the reasons set forth in the foregoing Opinion, the Court recommends that its judgment be affirmed.

BY THE COURT:

DATE: 11/26/2024

THOMAS STREET, SIERRA, J.