IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FRANCISCO TOVAR **PLAINTIFF**

VS. **CAUSE NO. 25CI1:19-cv-00071-WLK**

KRUEGER INTERNATIONAL,
INCORPORATED;
AND JOHN DOES #1-10 **DEFENDANTS**

MOTION FOR NEW TRIAL AND/OR REMITTITUR

COMES NOW, Defendant, Krueger International, Inc., by and through counsel of record, and files its Motion for a New Trial and/or Remittitur and would show unto the Court the following, to wit:

A. Introduction

This trial concerned a car accident that happened on February 9, 2016, that allegedly produced *inter alia,* a back injury. Though Plaintiff alleged several conditions, Plaintiff's focus, and the evidence, concentrated on Plaintiff's alleged back injury. Plaintiff alleged in his complaint, as well as during sworn deposition testimony, as did his wife, that Plaintiff endured constant back pain that was debilitating to his enjoyment of life and ability to work pain-free.

Defendants admitted that it was at-fault for the car accident and further admitted that it was responsible for medical damages the Plaintiff incurred for the next three (3) years, or through June 26, 2019, as produced by the Plaintiff, in the amount of $27, 654.92. In total, Plaintiff informed the jury that his actual medical expenses from February 9, 2016 (the date of the accident) through December, 2022 (the date of the trial) were $61,328.66.

Beginning with pre-trial motions and as the trial unfolded, the trial court erred when it

prevented Defendant from putting forth impeachment and highly relevant and probative evidence for the jury's consideration to rebut Plaintiff's claims. The trial court further erred in instructing the jury. As a result of these errors, the jury returned a verdict of $2 million dollars–*thirty-three times* Plaintiff's actual damages, many of which were litigation driven and included no medical treatment at all.

ARGUMENT

B. Motion for a New Trial

A new trial becomes appropriate when a trial court determines that error within the trial mechanism itself has caused a legally incorrect or unjust verdict to be rendered. The motion for a new trial...provides judges with the opportunity to remedy trial error before an appeal is commenced. Whether jury error or otherwise, our law has long recognized the importance of this remedial device. *See White v Stewman*, 932 So.2d 27, 33 (Miss. 2006).

This court should grant a new trial and/or remittitur upon a finding that it erred by preventing Defendant's ability to put forward highly relevant and probative evidence; that it erred in instructing the jury on pre-existing injuries; and, that the jury's verdict was so grossly against the overwhelming weight of the evidence that the trial court should conclude the jury was confused by faulty jury instructions, that jury departed from its oath and its verdict was a result of bias, passion and prejudice." *Dorrough v Wilkes*, 817 So.2d 567, 572 (Miss. 2002), *Roussel v. Robbins*, 688 So.2d 714, 723–24 (Miss.1996).

Nearly One-Hundred years ago, in *Beard v. Williams*, 161 So. 750 (Miss.1935), our Supreme Court recognized:

We are conscious of the fact that the verdict of a jury is to be given great weight, and

> is the best means, when fair, of settling disputed questions of fact. Nevertheless, throughout the entire history of jury trials, the courts have exercised a supervisory power over them, and have granted new trials whenever convinced, from the evidence, that the jury has been partial or prejudiced, or has not responded to reason upon the evidence produced. The duty of the court in supervising trials by jury is such a vital part thereof that no court may refuse to exercise such power whenever fully convinced of its duty so to do.

Beard, 161 So. at 751. A new trial can be ordered when "to allow [the verdict] to stand would be to sanction an unconscionable injustice." *Hyundai Motor America v. Applewhite*, 319 So.3d 987 (Miss. 2021).

As discussed below, the trial court should grant the Defendant a new trial so that Defendant is permitted to fairly defend the claims and conditions for which the Plaintiff sought compensation. The trial court should grant a new trial so that Defendant is able to impeach and/or rebut Plaintiff's claims and testimony that were patently false and/or misleading. Finally, the trial court should grant Defendant a new trial so the jury can be instructed according to Mississippi law.

1. The trial court erred by preventing the Defendant from introducing matters, testimony, sworn pleadings and judicial findings of the Workers' Compensation Commission concerning Plaintiff's 2009 work injury.

Baugh v. Alexander, 767 So.2d 269 (Miss Ct App. 2000), is instructive and on point to this assignment of error.

In the case of *Baugh v. Alexander*, the plaintiff filed a motion *in limine* asking the trial court to exclude evidence that she received health insurance and workers compensation benefits through her employer and was receiving disability payments from the Social Security Administration. The *Baugh* case was a negligence action filed against a driver that allegedly collided with Baugh in a grocery store parking lot. *Baugh*, 767 So.2d at 270. Prior to this motor vehicle accident, Baugh had fallen at her place of employment, and at the time of the accident, she was receiving benefits from

her employer's health insurance carrier and workers' compensation carrier, as well as Social Security disability benefits. *Id.* Baugh sought to keep the fact that she was receiving these benefits from getting before the jury. *Id.* The trial court denied her motion *in limine*. *Id.*

During the trial for her car accident, Baugh presented post-accident medical bills totaling in excess of $60,000 and testified that, because of chronic pain and irreversible symptoms of depression resulting from the vehicular accident, she did not expect to ever be able to return to gainful employment. She, thus, sought compensation for her medical bills, damages for pain and suffering, together with lost wages calculated on her prior earning experience and her projected earning career from age 46—her age at the time of the accident—through age 65. *Id.* In rebuttal response to her claims for compensation, the defendant, Alexander, was permitted to present competent evidence demonstrating that Baugh attributed her depressed state to her work injury fall in her workers compensation case. *Id.* at 271. As to her prospective permanent disability from pursuing gainful employment, the defense presented evidence that Baugh had, approximately three days prior to the wreck with Mrs. Alexander, left her job with complaints that, due to unresolved pain associated with her earlier fall at work, she was unable to perform the essential duties of the job. *Id.* Alexander also presented evidence that three days before the vehicular accident, Baugh had obtained a determination by the Social Security Administration that she was totally disabled from gainful employment due to symptoms that were largely indistinguishable from the complaints presented by Baugh at the trial of this cause. *Id.* Based on this conflicting evidence, the jury returned a verdict of $2,740.

Baugh appealed assigning as error, *inter alia*, that the trial court violated the collateral source rule when it permitted the defendant to introduce and publish evidence to the jury showing that Baugh had received health insurance and workers compensation benefits through her employer and

was receiving disability payments from the Social Security Administration. *Id.* at 272. The Court of Appeals disagreed with Baugh and held, the "collateral source rule applies *only* when the indemnity or compensation is for the *same injury for which damages are sought*. *Id*. (emphasis added) The Court of Appeals further took note that Baugh's payments through health and workers compensation insurance, as well as disability payments, were for an alleged injury that preceded the motor vehicle accident and the mere fact that Baugh's earlier injury produced symptoms largely indistinguishable from those symptoms Baugh alleged to have been caused by the wreck does not make them a collateral source of compensation for injuries received in the wreck. *Id.* Pointedly, the Court of Appeals continued, "*[t]o the contrary, evidence of such payments based on assertions of causation in another proceeding by the plaintiff that are inconsistent with her assertions of causation in this case becomes quite probative for the jury in carrying out its duty to determine whether the plaintiff has met her burden of proving that the wreck caused the injuries for which she seeks compensation from the defendant*." *Id.* (emphasis added)

The trial court's ruling that Tovar's worker's compensation file, including sworn petitions, judicial orders reciting sworn testimony, and declarations was impermissible collateral source prevented Defendant from proving to the jury that on **December 21, 2015 and January 25, 2016**–twelve days *before* the car accident, Tovar testified and the Administrative Judge so found:

- that Tovar's "pain level [from the 2009 work injury] stayed about the same and did not subside"[1];
- that the last time Tovar had gainful employment was in a place where there was an incubator for chickens in 2013 and described the work as light and that he had not been hired to work

[1] Yet, Tovar testified at trial that he was without pain after 2013–when he had the fusion hardware removed, to advance his narrative that the accident caused all his back complaints.

anywhere else[2];

- that construction work is difficult to find and it is hard work considering his back trouble[3];

- that he suffered a permanent and total loss of wage-earning capacity because of the injury, two surgeries, and continuing pain and restrictions[4];

- that medical evidence supported that the percutaneously placed pedicle screws in Tovar at the LS level could have disrupted the L4-5 facet joint and generated a pain process there.

- that on April 6, 2016–two months after the car accident, Tovar executed final settlement documents totaling $143,170.54 which included disability payments for the maximum 450 weeks, medical payments and settlement.

Importantly, as in *Baugh*, the injuries Tovar attributed to the car accident were/are largely indistinguishable from that which he attributed to his work injury and settled after the car accident. Not only was it error to rule Tovar's workers' compensation file, and all its contents, as collateral source under the circumstances, Mississippi law holds that when evidence [cloaked as collateral source] is introduced for a purpose *other than* to mitigate damages, such as impeachment or demonstrating causation, the collateral source rule is not violated and the evidence may be admitted. *Geske v. Williamson*, 945 So.2d 429, 434 (Miss. Ct. App. 2006), citing *Burr v. Miss. Baptist Med. Ctr.*, 909 So.2d 721, 729 (Miss. 2005).[5] *See also*, *Robinson Property Group, L.P. v. Mitchell,* 7

---

[2] Yet, Tovar had been working in construction and on a farm since 2014.

[3] Yet, during his sworn testimony to the Commission, Tovar was indeed working in construction.

[4] Yet, the jury awarded an indivisible $1,184,022 for "permanent impairment" purportedly due to the car accident that happened 12 days *after* Tovar attributed the same 'impairment' to his 2009 work injury.

[5] *See also Robinson Property Group, L.P. v. Mitchell*, 7 So.3d 240, 245 (Miss. 2009) ("Of course "it is a given, requiring no citation, that courts should never condone false testimony. .... Therefore, to the extent that courts of this state have held that evidence of collateral-source payments may not be introduced for the purpose of impeaching false or misleading testimony,

So.3d 240, 245 (Miss. 2009)("Mississippi also holds that "in some circumstances, evidence of a 'collateral source' may be admissible, 'as probative of a relevant proposition, say "control" or credibility of a particular witness.'" (citations omitted)).

2. The trial court erred in instructing the jury on pre-existing injuries so that the instruction given amounted to a peremptory instruction.

The law is clear, a Plaintiff is "not entitled to damages for any injuries which existed at the time of the accident" with KI. *Winston v. Cannon*, 430 So.2d 413, 416 (Miss.1983).

The facts of this car accident case are equally clear and nearly identical to the *Baugh* case. On February 9, 2016, Tovar was in an accident were he extricated himself from the vehicle. Tovar walked to the ambulance and went to the hospital for evaluation. Tovar was x-rayed, with all normal findings and discharged in "good condition." Meanwhile, Tovar maintained and affirmed that his back pain and complaints were attributed to his 2009 work injury–even two months after the car accident. purportedly to facilitate and consummate settlement. The evidence, had the court allowed it, would have shown that no where in his March-April, 2016 filed Workers' Compensation certified pleadings did Tovar mention, reference or attribute any of his complaints of pain and disability to the accident as each and every complaint in every degree was attributed to his work injury and no other–not even an aggravation.

Similarly, no where did Tovar reveal his workers' compensation claim and settlement within this lawsuit (until confronted with same), nor did the medical professionals he used to procure opinions have knowledge of his workers compensation case, settlement and assigned impairment[6]

---

those decisions are expressly overruled.")(citations omitted).

[6] Q. Did Mr. Tovar tell you when he was visiting you in 2021, that a month after the car accident he was pursuing a permanent disability status related to a work

that were pre-existing and continuing even after the accident.

On this issue, the jury instruction originally proffered by the defense stated the following:

> A pre-existing condition is a condition that was present before the condition the Plaintiff alleges he suffers from as the result of the alleged negligence he claims the Defendant caused. Mr. Tovar is not entitled to damages for any injuries or conditions which existed on February 9, 2016, the date of the accident with Krueger International. However, if a defendant's negligence caused any aggravation of any preexisting injury, the defendant bears the responsibility for the portion of the injury or the aggravation of the injury that it caused, and you, the jury, are instructed to consider the aggravation of the injury. If a party causes aggravation of a preexisting injury, its liability is generally limited to the portion of the injury or aggravation of the pre-existing injury if the same is proven by a preponderance of the evidence. If you cannot apportion the damages, the Kreuger International ***may*** be liable for the whole amount of the alleged damages, but only if you find that Mr. Tovar proved that any such aggravation was proximately caused by the February 9, 2016 accident, as proof of causation is still required.[7]
>
> Therefore, you are instructed that if you find that Mr. Tovar complained of and suffered from certain conditions before the February 9, 2016 accident, and those complaints were attributed to events that occurred before the accident, you should consider those as pre-existing conditions when reaching your verdict and adjust your verdict as you see fit based on the causal relation, if any, between the Plaintiff's pre-existing condition and his present complaints.

[MEC 65-1,Defendant's Proposed Jury Instruction D-5]**.** Defendant's proposed instruction is a correct statement of Mississippi law in every regard. *See Koger v Adcock*, 25 So.3d 1105 (Miss. Ct App. 2010), *Freeny v Griffin Industries, Inc*. 2012 WL 663101 (S.D. Miss 2012)(applying Mississippi law). *Koger* expressly states that apportionment occurs "if [defendant's] negligence caused any aggravation of any preexisting injury."

---

injury that happened in 2009. Did you know that?

A. I -- I believe I answered that before in the deposition, that I was not aware of that.

[7] "Proof of causation is still required" *Freeny v Griffin Industries, Inc*. 2012 WL 663101 (S.D. Miss 2012), citing *Burnham v. Tabb*, 508 So.2d 1072 (Miss.1987).

Conversely, Plaintiff's proposed the following instruction on pre-existing injury which the trial court gave without modification:

> In deciding the amount of Francisco Tovar's damages, you may consider his condition of health before sustaining the injuries complained of and any disability resulting from his injuries in the wreck sued upon which has been proven by a preponderance of the evidence.
>
> You are instructed that a negligent party takes the injured person as they find him. That is, the negligent party who injures another suffering from a pre-existing condition ***is*** liable for the entire damage when no apportionment can be made between the pre-existing condition and the damage caused by a negligent party.

[MEC 85, Court's Jury Instruction #14]; [MEC 66 Plaintiff's Proposed Jury Instruction P-6]

By accepting Plaintiff's proposed instruction as drafted, thereby permitting the word operative word "***may*** be liable " to be submitted with "***is*** liable ", the trial court improperly issued a peremptory instruction removing any and all deliberation to apportion damages inconsistent with Mississippi law. This error was compounded by the trial court's refusal to permit the Defendant publish to the jury Tovar's executed, notarized, and sworn pleadings attributed all his back issues to a 2009 work injury–even after the car accident.

Koger specifically and expressly holds:

> if [a defendants's] negligence caused any aggravation of any preexisting injury to [a plaintiff], [the wrongdoer] bears the responsibility for the portion of the injury or the aggravation of the injury that he caused; and the jury may be instructed to consider the aggravation of the injury. *Id. See also Harkins v. Paschall*, 348 So.2d 1019, 1021–22 (Miss.1977). Moreover, where the jury cannot apportion the damages, the defendant ***may*** be liable for the whole amount of damages.

Koger v Adcock, 25 So. 3d 1105 (Miss. Ct App. 2010).[8]

---

[8] The Mississippi Supreme Court has unequivocally stated that "[i]f evidence indicates an aggravated condition, a plaintiff may obtain an instruction covering same" *Harkins v. Paschall*, 348 So.2d 1019 (Miss.1977); *Tri-State Transit Co. v. Martin*, 179 So. 349 (1938), and a trial court's failure to explain the law regarding a pre-existing condition when evidence of a

Moreover, the trial court gave eight (8) instructions concerning damages, yet each instruction proposed by Defendant that instructed the jury KI *was not responsible for any physical, emotional, or mental problems that Francisco Tovar may have had prior to the February 9, 2016 accident* or that the Defendant was not responsible for any physical or mental problem that was not proven to be proximately caused and the cause in fact of the February 9, 2016 accident was refused or modified to exclude the particular and instructive language. Further, the trial court erred in failing to instruct the jury on the basic elements of negligence in this negligence case as well the necessity and explanation of proximate cause and cause in fact as provided in Proposed Instruction D-1 [MEC 65-1]. Instead, the trial court merely ordered the Defendant to extract the corporate language (contained in paragraph 2) to create a new instruction and refused the remainder of instruction and in doing so the jury was never instructed on the elements of negligence in this negligence case.

Finally, the trial court erred in refusing to instruct the jury that they could not award damages in any amount related to wage/employment related matters as so stipulated [MEC36] or property damages–requiring the Defendant to further omit the language from proposed D-4 [MEC 65-1]

While it is true that jury instructions should be taken as whole and upheld if, when together as a whole, fairly announce the law of the case and create no injustice, such is not the case here. The trial court improperly instructed the jury in the one and only instruction on pre-existing injuries and the trial court refused Defendant's instruction on negligence, cause-in-fact, and legal binding stipulations on elements of damages. For these reasons stated here, the trial court should grant a new trial to remedy the errors in instructing and/or failing to instruct the jury on relevant law to case.

---

pre-existing condition is presented at trial constitutes reversible error. *Koger v. Adcock*, 25 So.3d 1105 (Miss. App. 2010).

3. The trial court erred when it excluded evidence of third party payments, a mere fraction of what Plaintiff represented to the jury, even after the Plaintiff and counsel blatantly opened the door.

Throughout the trial, Plaintiff and his counsel eluded to and ultimately blatantly testified that Plaintiff had not had the "recommended" procedure, supposedly recommended years earlier, because he could not afford it. At that time, Defendant attempted to delve into the fact that Plaintiff received all medical evaluations/recommendations to date gratuitously and had paid for nothing at the time of trial, in fact Plaintiff never received a bill. However, the trial court prevented Defendant from exposing the truth to the jury.

At no time did Defendant effort or even hint to "mitigate" its potential liability for the $60,000 in actual damages the Plaintiff boarded. However, the jury should have been advised that a factoring company in the state of Virginia controlled Plaintiff and his counsel, dictated what medical facility Plaintiff could go to, based on a side contract, and dictated to the Plaintiff's counsel the desired recommendations to inflate damages.

Mississippi law holds that when evidence is introduced for a purpose other than to mitigate damages, such as impeachment or demonstrating causation, the collateral source rule is not violated and the evidence may be admitted. *Geske v. Williamson*, 945 So.2d 429, 434 (Miss. Ct. App. 2006), citing *Burr v. Miss. Baptist Med. Ctr.*, 909 So.2d 721, 729 (Miss. 2005). Mississippi also holds that "in some circumstances, evidence of a 'collateral source' may be admissible, 'as probative of a relevant proposition, say "control" or credibility of a particular witness."' *Robinson Property Group, L.P. v. Mitchell,* 7 So.3d 240, 245 (Miss. 2009). In addition, once Mr. Tovar testified that he did not have the recommend trial because he could *not afford it*, it was error to prevent the Defendant from probing into both Plaintiff's contractual and contingent HMR arrangment, his workers'

compensation settlement obtained after the car accident, as well as his basic financials (which Plaintiff's counsel objected and the court sustained); thereby shielding from the jury Plaintiff's purchase of a rental house, an additional land lot, in additional to the ownership of his home and three vehicles and funding private school--while feigning inability to pay$37,327.99–the estimated cost of a spinal cord stimultor according to Cowen.

The trial court erred in denying Defendant the ability to question, interrogate, and rebut the veracity of Plaintiff's testimony concerning ability to pay for the medical care that was supposedly "recommended" years earlier.

4. The trial court erred when it refused to permit Defendant from showing videos and surveillance depicting Plaintiff in real-life situations and events that contradicted Plaintiff's testimony and characterizations of his alleged injuries.

Notwithstanding, that Defendant admitted to liability, the court permitted, over Defendant's objection, Plaintiff's repeated use of accident photographs--none of which depicted the Plaintiff or his alleged injuries as Plaintiff was not captured in any of the photographs. Upon Defendant's objection, the trial court ruled that the photographs went to Plaintiff's damages and injuries, thereby bolstering Plaintiff's alleged injury claims, inflaming the jury and exacting undue prejudice to the Defendant.

Conversely, the trial court prevented and denied Defendant's use of actual video footage showing Plaintiff recreating in various physical and strenuous situations, as well as a large number of videos depicting Plaintiff in work environments, using machinery, climbing, lifting, pushing, reaching and bending, without difficulty at all.[9] In other words, the trial court permitted the Plaintiff

[9] These videos consisted of Plaintiff's social media, publically posted videos that were always in the possession of the Plaintiff and that were requested by Defendant in discovery but

to present a false narrative of debilitating condition, while denying the Defendant's ability to defend and rebut that narrative with contradictory evidence.

Importantly, the day the trial commenced, Defendant produced to the trial court all videos and surveillance it intended to use. Defendant also produced the videos and surveillance to the Plaintiff mere days after receipt of the same, even though some of the videos were actually Plaintiff's property, but Plaintiff failed to disclose them to Defendant in violation of his discovery obligation and duly propounded discovery request.

RULE 401 OF THE MISSISSIPPI RULES OF EVIDENCE deals with the relevance of evidence. It states,

> "'Relevant Evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Miss R. Evid. 401. MISSISSIPPI RULE OF EVIDENCE 401 is a broad rule, and if the evidence has any probative value, the rule favors admission. *Redhead v. Entergy Mississippi, Inc.*, 828 So.2d 801, 807 (Miss. Ct App. 2001).

Conversely, RULE 403 OF THE MISSISSIPPI RULES OF EVIDENCE deals with the exclusion of relevant evidence on the basis of prejudice and provides:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Miss R. Evid. 403.

---

concealed. Notwithstanding, additional videos included Plaintiff engaged in rigorous employment activities captured for impeachment purposes, Defendant produced those videos to the Plaintiff as well as to the trial court.

The evidence Defendant sought to introduce and publish to the jury would only have provided the jury with the truth. By not allowing the evidence, the trial court exacted unfair prejudice, confusion of the issues and allowed the jury to be misled by Plaintiff's false narrative.

The trial court should grant a new trial so that all the evidence can be presented and a jury, exercising truth in their oath, can fairly evaluate the same.

C. Motion for Remittitur

The evidence at trial demonstrated that from the date of the accident, February 9, 2016, through the trial date of December, 2022, Plaintiff "incurred" a total of $61,328.66 of damages–all medical-related and mostly evaluations as opposed to treatment. Plaintiff testified he was not taking medication for his alleged complaints, he had not undergone any medical procedures since 2018, and that he continued his rigorous labor-intensive employment. The last "expense" by a medical doctor, who testified he did *not* "treat" the Plaintiff, was on February 21, 2021–twenty-two months before trial. Plaintiff did not bring any claim for damages related to wages (and there was no testimony related to the same) nor did Plaintiff bring any property damage claim, as Plaintiff had been made whole years earlier. Punitive damages were not considered. Nonetheless, the jury returned a verdict form in the amount of $2 million dollars with uncanny speed. The verdict, being THIRTY-THREE times the entirety of the damages Plaintiff boarded, is not supported by the evidence and so excessive as to shock the conscience.

For example, Plaintiff's counsel told the jury that Plaintiff's past medical expenses **totaled** $61,328.66. Defendant stipulated to $27, 654.92 for "Admitted Past Medical Expenses." Straining to make the math work to award the even $2 million Plaintiff's counsel asked for, the jury awarded "$61,000.08" for "***Additional*** Past Medical Expenses, if any" without taking into account

Defendant's inclusion and stipulation of $27, 654.92 was part of the total $61,328.66. [MEC 84]

In addition, the jury awarded $1,184,022.00 for "past, present and future pain and suffering, mental anguish, loss of enjoyment of life, permanent impairment and disfigurement," without any evidence whatsoever. Moreover, the trial court excluded direct evidence that contradicted and impeached the Plaintiff's, and that of his witnesses, testimony, and characterizations.

For example, the only evidence of impairment is that which the Plaintiff was assigned *after* the car accident but which he **attributed** in a different court **to his 2009 work injury** in sworn testimony and Plaintiff's Sworn Petition for Compromise, **filed after the accident,** which was suppressed by the trial court. Plaintiff produced no evidence of impairment at all.

Plaintiff put on no evidence concerning mental anguish, loss of enjoyment of life, or disfigurement. Importantly, the trial court prevented the Defendant from impeaching, rebutting, and controverting even the inference of such claims when it denied Defendant from showing the jury actual video and surveillance footage of the Plaintiff in various situations over various time periods in real-life situations that defied any such claims.

The award of $1,184.022 for such intangible claims where no evidentiary support was provided is clear error and should be subject to complete remittitur.

As it concerns the jury verdict of $727,323 for the surgical placement of a spinal cord simulator, there was **no** medical testimony that Plaintiff received such a recommendation. In fact the only testimony that addressed the issue was from Dr. Lewis who testified that he did ***not*** recommended "**an insertion"**, he only recommended a trial of the stimulator." Thus, the jury's verdict for future medical expenses, presumably based on Plaintiff's Life Care Planner, transformed a ***trial procedure*** to a full blown surgical procedure was against the overwhelming weight of the

evidence.

Based on the evidence that was presented to the jury, the verdict was contrary to the substantial weight of the evidence and conspicuously influenced by bias, passion, and prejudice. *See Andrew Jackson Life Ins. Co. v. Williams*, 566 So.2d 1172, 1190 (Miss.1990)(A court in Mississippi can disturb a jury verdict if the court finds that the damages are excessive for the reason that the jury was influenced by bias, prejudice, or passion, so as to shock the conscience or that the damages awarded were contrary to the overwhelming weight of credible evidence.)

RESPECTFULLY SUBMITTED, this the 15h day of December, 2022.

/s/ Donna M. Meehan
Donna M. Meehan (MSB No. 100484)
Attorney for Kreuger International, Inc.

OF COUNSEL:
COSMICH, SIMMONS & BROWN, PLLC
One Eastover Center
100 Vision Drive, Suite 200 (39211)
Post Office Box 22626
Jackson, Mississippi 39225-2626
T: 601.863.2100
F: 601.863.0078
E: donna@cs-law.com

CERTIFICATE OF SERVICE

I, Donna M. Meehan, counsel for the Defendant, do hereby certify that I have this day filed the above and foregoing *Motion for New Trial And/or Remittitur* via the Court's MEC system, which electronically sent a true and correct copy of the same to all counsel of record.

I further certify that I have mailed, via Electronic Mail and Hand-delivery the forgoing to:

Judge Winston L. Kidd
Post Office Box 22711
Jackson, MS 39225-2711
407 East Pascagoula St.
Jackson, MS 39205

THIS, the 15th day of December, 2022.

/s/ Donna M. Meehan
Donna M. Meehan