IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JOSEPH ANDRADE,	)	CASE NO. 2:24-cv-00150- AZ
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SPEEDWAY LLC,	)	
	)	
Defendant.	)	
	)	

DEFENDANT SPEEDWAY LLC'S MOTION FOR NEW TRIAL

Comes now the Defendant Speedway LLC, by counsel, pursuant to Federal Rule of Civil Procedure Rule 59(a)(1)(A), and respectfully requests this Court grant a new trial on the issue of damages only. Speedway submits the following brief in support of its Motion for New Trial:

INTRODUCTION

To say this was a "hard fought" trial would be an understatement. The jury, after many hours of deliberation, found Speedway at fault and allocated 50% comparative fault to plaintiff. The jury had been correctly instructed that, under Indiana law, any greater fault allocation would have denied plaintiff any recovery. Speedway, despite its disappointment, recognizes that the jury's fault allocation was supported by the evidence and is willing to accept their unanimous judgment.

Nevertheless, Speedway submits, as shown below, that a deliberate and cumulative course of action by Plaintiff's counsel throughout the trial resulted in an excessive verdict, clearly the result of passion or prejudice, which compels a new trial on the issue of damages only.

I. LEGAL STANDARD

Under Rule 59(e), this Court may grant a new trial when the jury verdict is against the weight of the evidence, when the damages are excessive, or when, for other reasons, the trial was not fair. *General Foam Fabricators, Inc. v. Tenneco Chemicals, Inc.*, 695 F.2d 281 (7th Cir. 1982). A new trial on damages is proper when the damage award is "'monstrously excessive,' born of passion and prejudice, or [is] not rationally connected to the evidence." *Pincus v. Pabst Brewing Co.*, 893 F.2d 1544,1554 (7th Cir. 1990). This Court is given discretion to determine if a jury award is excessive and has the authority to reduce any such judgment. *Id.*

The decision on whether to grant a new trial rests within the trial court's discretion. *Sellers v. Baisier*, 792 F.2d 690 (7th Cir. 1986). "If it should clearly appear that the jury has committed a gross error or has acted from improper motives, or has given damages [that are] excessive in relation to the person or [the] injury, it is as much the duty of the court to interfere, to prevent the wrong, as [it is] in any case." *Bucher v. Krause*, 200 F.2d 576, 586 (7th Cir. 1952). The trial court has broad discretion in ruling on motions for a new trial and will be reversed only when exceptional circumstances show a clear abuse of discretion. *Sellers*, 792 F.2d. at 693 (citing *General Foam Fabricators v. Tenneco Chemicals, Inc.*, 695 F.2d 281, 288 (7th Cir. 1982)).

II. COMMENTS BY PLAINTIFF'S COUNSEL DURING OPENING STATEMENT AND CLOSING ARGUMENT.

From the outset of trial, plaintiff's counsel sought to incite the jury to "punish" Speedway.

Counsel's theme that the jury should "punish" Speedway was readily apparent throughout the case. In his opening statement, counsel argued that **"Speedway LLC"** (as he always referred to Defendant) was indifferent to its customers and that while it should have recognized a fall was "just a matter of time," Speedway failed to take any action. Counsel suggested, "if Speedway had done anything at all, there would have been no fall." This argument was not supported by evidence,

as demonstrated by the fact that thousands of customers had successfully navigated the "condition" in question during Speedway manager Doretta Austin's five years at the Valparaiso store.

In closing argument, after an extremely contentious trial, plaintiff's counsel improperly urged the jury to consider Speedway's financial resources during deliberations. Counsel argued that Speedway LLC, its parent corporation 7-Eleven, "or who ever owns it" had plenty of money to repave the entire parking lot. He argued, without supporting evidence, that Speedway had "thousands of stores" and improperly urged the jurors to put themselves in Plaintiff's shoes to "send a message" and punish Speedway.

The Court stated that Plaintiff's counsel had "pushed the limits" and made two admonishments to the jury, but denied Defendant's motion for mistrial.

III. PLAINTIFF'S ORDER *IN LIMINE* VIOLATIONS.

The Court granted, without objection, three motions in limine filed by Defendant, which plaintiff's counsel and witnesses repeatedly violated. Two went primarily to issues of liability. Despite an order that there be no testimony about conversation between Plaintiff's family members and any Speedway representatives regarding Speedway's settlement practices, plaintiff's counsel asked at least two different questions to Mrs. Andrade about her conversations with Speedway employees regarding Speedway's settlement practices.

A second order excluded testimony regarding the condition of the parking lot after the date of plaintiff's fall. Nevertheless, Plaintiff's counsel repeatedly focused his attention on the entire parking lot rather than the condition at issue. For example, during closing argument, plaintiff's counsel instructed the jury to review the surveillance video and, specifically, to focus on the condition of the parking lot. By violating the order, Speedway was denied the opportunity to address (what obviously would have been an irrelevant subject) the lack of other incidents in the parking lot as a whole.

Third, and bearing directly on damages, testimony regarding any dental injuries, not supported by a previously-disclosed expert opinion, was to be excluded. Plaintiff's son testified that his father had damaged a bridge and crown as a result of the fall. It appears that Plaintiff's witnesses, who were all family members, had not been instructed about the order *in limine* and the nature of testimony which was to have been avoided.

IV. PLAINTIFF'S ATTEMPT TO PORTRAY SPEEDWAY AS EVASIVE.

Plaintiff's counsel attempted to portray Speedway as evasive by introducing a 2006 local ordinance without prior notice and by calling Speedway's trial representative as a rebuttal witness without notice or proper foundation.

During his cross-examination of Speedway manager Doretta Austin, counsel asked if she was familiar with local ordinances. When she responded, generally, “yes,” he attempted to offer a 2006 Valparaiso local ordinance intro evidence, which had never been listed as an exhibit, and justified the offer by characterizing Austin as an “expert." After a lengthy and surprisingly profane sidebar, during which, as was usually the case, counsel spoke loudly and turned partially toward the jury so they could hear his sidebar arguments, the Court refused to permit this line of questioning.

Even more surprising, after the close of Defendant's case, counsel called, in front of the jury, Speedway's trial representative as a rebuttal witness. The Court and Speedway's counsel were surprised; Mr. Velasquez had been introduced to the jury only as a representative of the corporate defendant Speedway. His title, position or duties were never disclosed. Plaintiff indicated he intended to question the trial representative on the subject of “training” for which there was no reason to assume that he had any knowledge, a subject which was not appropriate for any rebuttal. Again, after a lengthy and contentious sidebar, the Court refused to permit this line of questioning.

Finally, on several occasions during the direct examination of Doretta Austin, plaintiff's counsel made a show in front of the jury, asking to see documents which had not been shown to the witness, offered in evidence or listed on any exhibit list.

The cumulative result of this conduct had the desired effect of making Speedway appear evasive and attempting to withhold what counsel obviously was suggesting was relevant evidence. While admittedly these questions went to the issue of fault, the desired effect was to inflame the jury to return a verdict not commensurate with the evidence on damages.

In addition, at various points during questioning or argument by defendant's counsel, plaintiff's attorney spoke (not at sidebar) loud enough for the jury to hear that statements by defendant's attorney were "absolute garbage" and "total bullshit." Counsel's misconduct prejudiced Speedway.

V. DAMAGES

While there is no doubt that Plaintiff sustained injuries in the fall and was damaged, a reasonable jury could not have valued those damages at $1 million. The only medical evidence came from Plaintiff's treating plastic surgeon, Dr. Retson who, after describing his treatment, opined that Plaintiff had made a good recovery, had completely healed from his injuries, and had no permanent partial impairment rating. Plaintiff admitted he had sought no additional medical treatment since November 2023. No reason was offered for his failure to do so.

The remainder of the very limited evidence on damages came from Plaintiff and his wife and two sons. They listed several factors not mentioned in Dr. Retson's report including – plaintiff didn't like pain pills; difficulty chewing; pain in feet; inability to walk as far or as fast; difficulty sleeping; more reclusive due to his drooling, jaw pain, clicking and popping; very active before the accident (daily walks), and not active after the accident.

During his case-in-chief counsel made no mention of Plaintiff's medical bills which had been stipulated. That is understandable since the amount accepted by his healthcare providers in full satisfaction of their charges was $8,231.62. There was no mention of Plaintiff's life expectancy (plaintiff is 78 years old) and no medical suggestion that injuries were permanent. Finally, there was no lost income claim.

While it is certainly the jury's job to determine damages, which need not be proved with medical certainty, such damages must be reasonable. In this case it is obvious the jury, while recognizing Plaintiff's significant fault, desired to award damages. Plaintiff's counsel having asked the jury to value the damages at $2 million, creates a strong suggestion that the jury "compromised", by cutting that shocking request in half. Nevertheless, there is no relation of gross calculation or "net" verdict to Plaintiff's medical specials, permanent impairment, future treatment or continuing problems.

CONCLUSION

The cumulative conduct of plaintiff's counsel throughout trial prejudiced Speedway and resulted in an excessive jury award that was not rationally connected to the evidence. Speedway would, of course, welcome a new trial in its entirety. However, Speedway accepts the jury's findings regarding fault and comparative fault, and requests the court order a new trial on the issue of damages only. Both sides could be ready to try the case on short notice which would, based on the presentation of evidence in the original trial, take less than one day.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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