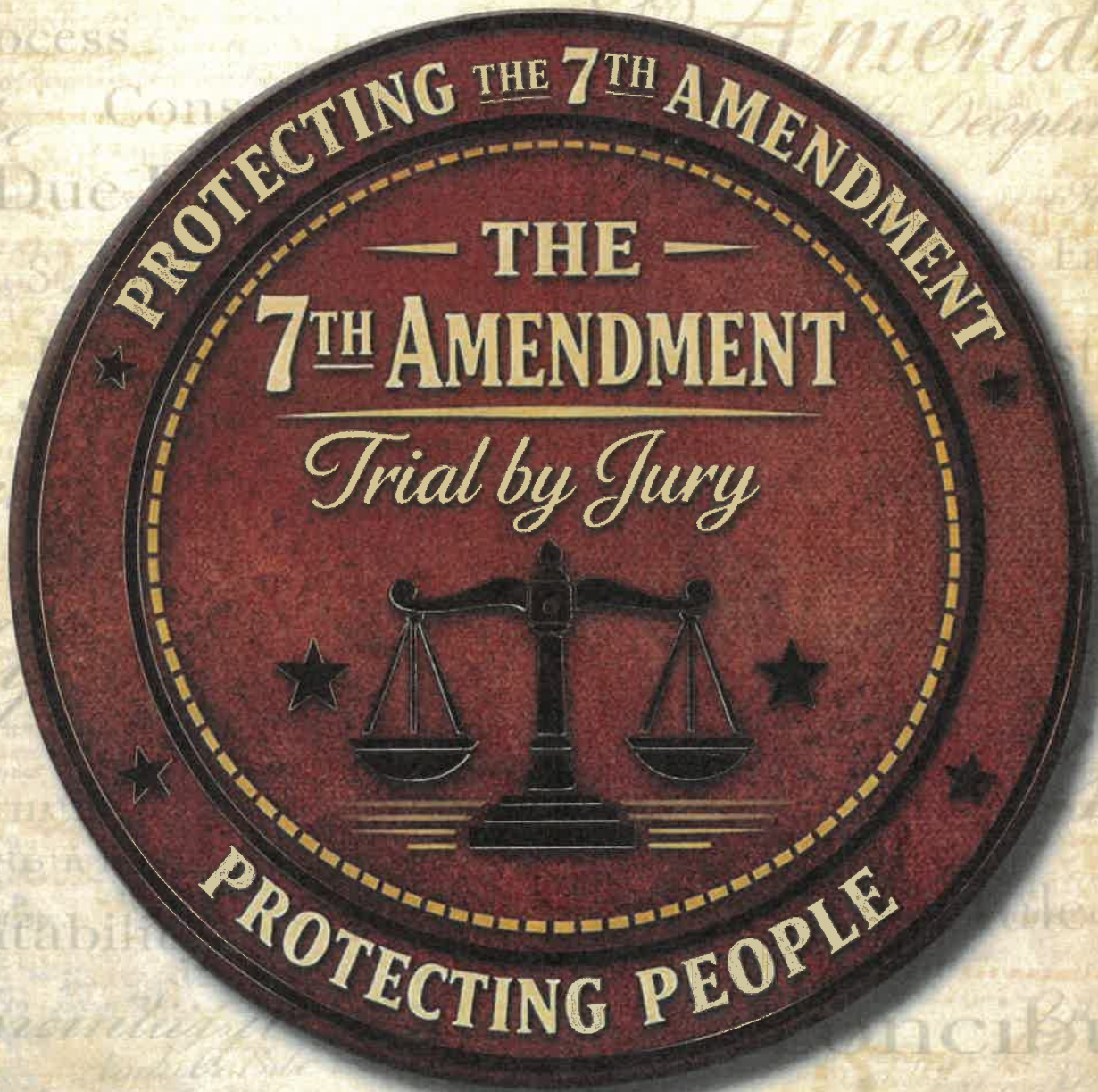


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Please direct all inquiries about
editorial content to:

Alabama Association for Justice
Post Office Box 1187
Montgomery, Alabama 36101

Phone 334.262.4974

E-mail: ALAJ@alabamajustice.org

Web: www.alabamajustice.org

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OUR MISSION *We preserve and protect the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal – The Courtroom*

Considering Remittitur When a Jury Returns a Verdict for Compensatory Damages in a Personal Injury Case

By David G. Wirtes, Jr., A. Carmen Chambers, Margaret J. Utsey

We recently were tasked with examining every Alabama appellate opinion where a jury returned a verdict in a personal injury case for compensatory damages and the trial or appellate court then considered remittitur. Our research revealed several settled principles that plaintiffs' counsel must bear in mind when confronted with efforts to reduce compensatory damages verdicts.

First, and most important, in the absence of evidence that the verdict is the product of bias, passion, corruption, misconduct or some other unlawful influence, Alabama law does not permit side-by-side comparisons of jury verdicts in similar cases. In *Campbell v. Kennedy*, 275 So.3d 507, 518-19 (Ala.

2018), the Supreme Court stated “[i]n the absence of a flawed verdict, a comparison of jury verdicts in similar cases is not the standard for determining whether a jury verdict should be reduced.” Accordingly, do not allow a defendant to present remittiturs from other cases as somehow persuasive about what the trial or appellate court should do with a verdict in your case.

Second, if there is some circumstance where a side-by-side verdict comparison may be appropriate, always remember to calculate the present value of the prior verdicts offered for comparison. Remember that *Langdon v. Miller*, 276 Ala. 195, 196, 160 So.2d 479, 480 (1964) and *Louisville and NR Co. v. Tucker*, 262 Ala. 570, 581, 80 So.2d 288, 298 (1955) counsel that the present value of a dollar must be compared with the value in former years when ascertaining whether an amount awarded by a jury is excessive.

Third, the standard of review matters. When challenging a sacrosanct jury verdict, in the absence of evidence that the verdict was in some way the product of an improperly functioning jury, the collective verdict of the jurors must be respected and left intact. In *Campbell v. Kennedy*, *supra*, the Court reiterated this stringent standard as follows:

The law is clear, however, that jury verdicts are presumed correct, especially where damages awarded are for pain and suffering. ... The law is also clear that compensatory damages for pain and suffering cannot be measured by any yardstick, and the amount awarded must be left to the sound discretion of the jury, subject only to correction

by the court for clear abuse or passionate exercise of that discretion.

Id., 275 So.3d at 516, internal quotation marks and citations omitted. Stated another way:

When there is no evidence before the court of any misconduct, bias, passion, prejudice, corruption, improper motive, or cause not consistent with the truth and the facts, there is no statutory authority to invade the province of the jury in awarding compensatory damages.

Hornady Trucklines v. Meadows, 847 So.2d 908, 922 (Ala. 2002). The *Campbell v. Kennedy* and *Hornady Trucklines v. Meadows* standards of review are of ancient vintage. As demonstrated in the reports below, remittiturs are rarely granted, and we found no reported Alabama appellate opinion in the past 100-years where a compensatory damages verdict in a personal injury case was reduced simply because the jury awarded “too much.”

■ **Campbell v. Kennedy, 275 So.3d 507 (Ala. 2018).**

Passenger-van driver sustained a comminuted right femur requiring intramedullary rod fixation, bilateral mandibular fractures, and a pulmonary contusion, resulting in chronic leg pain and occupational limitations. \$3,000,000 verdict affirmed without remittitur. (Present Day Value (“PDV”) in 2025 per online Consumer Price Index inflation calculator is \$3,820,321.)

“The law is clear, however, that jury verdicts are presumed correct, especially where damages awarded are for pain and suffering... The law is also clear that compensatory damages for pain and suffering cannot be measured by any yardstick, and the amount awarded must be left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise of that discretion.”

Campbell, 275 So.3d at 516, internal quotation marks and citations omitted.

■ **Hornady Truck Lines v. Meadows, 847 So.2d 908 (Ala. 2002).**

Tractor-trailer collision resulting in multiple serious injuries. Don Meadows sustained multiple fractures and acute respiratory distress syndrome; Sandra Meadows suffered pelvic and shoulder injuries; Chantz Meadows sustained bilateral ankle fractures with permanent impairment; and Mildred Dorman sustained a shattered pelvis requiring a total hip replacement. Compensatory awards of \$2,000,000; \$1,000,000; \$1,500,000; and \$1,750,000 affirmed without remittiturs. (PDVs = \$3,585,789; \$1,792,894; \$2,689,341; and \$3,151,518, respectively).

“When there is no evidence before the court of any misconduct, bias, passion, prejudice, corruption, improper motive, or cause not consistent with the truth and the facts, there is no statutory authority to invade the province of the jury in awarding compensatory damages.”

Hornady, 847 So.2d at 922.

■ **Hathcock v. Wood, 815 So.2d 502 (Ala. 2001).**

Husband suffered neck and head injuries resulting in chronic pain, depression, cognitive decline, and mental

anguish; wife sustained chest and rib pain with loss of consortium; \$600,000 and \$200,000 affirmed without remittiturs (PDVs = \$1,088,986; \$362,995).

“When we review a jury verdict on the ground of excessiveness, our review focuses on the plaintiff, and we must ask what the evidence supports in terms of the loss or harm suffered by the plaintiff. ... In the absence of a flawed verdict, no statute allows us to invade the jury’s province to award compensatory damages.”

Hathcock, 815 So.2d at 510, internal citations omitted.

■ **Daniels v. East Alabama Paving, 740 So.2d 1033 (Ala. 1999).**

Driver and passengers sustained multiple physical injuries and severe mental anguish including lacerations, neck and back pain, dental injuries, and post-traumatic grief from witnessing the death of a child arising from a resurfacing-related single-car crash; compensatory awards from \$10,000 to \$2.5 million affirmed without remittitur (PDVs = \$19,408; \$4,852,000).

“In the absence of a flawed verdict, however, a comparison of jury verdicts in similar cases is not the standard for determining whether a jury verdict should be reduced. The trial court must first determine that the verdict was flawed... [A] review of a jury verdict for compensatory damages on the ground of excessiveness must focus on the plaintiff (as victim) and ask what the evidence supports in terms of damages suffered by the plaintiff.... This Court has consistently held that a trial court cannot interfere with a jury verdict merely because it believes the jury gave too little or too much.”... “Given the fact that the trial court found no improper motive on the part of the jury, and the fact there is no fixed standard for determining an award for physical pain and suffering, we conclude that the trial court erred in ordering the remittiturs.”

Daniels, 740 So.2d at 1044, 1050, internal citations omitted.

■ **Walmart Stores v. Dobson, 709 So.2d 1252 (Ala. 1998).**

Two-year-old child sustained a head injury with scarring, a bald spot, and prolonged pain after being struck by a pallet jack pushed by a store employee; \$20,000 affirmed without remittitur (PDV = \$39,316).

The law is clear that there is no yardstick to measure the amount of recompense which should be awarded for pain or mental suffering... Suffice it to say, the record is replete with evidence regarding Eric’s pain and suffering. As such, we conclude that the jury’s assessment of damages in this case was well within the parameters of the evidence presented, as well as within the jury’s discretion.”

Dobson, 709 So.2d at 1254, internal citations and quotation marks omitted.

■ **JB Hunt Transport v. Credeur, 681 So.2d 1355 (Ala. 1996).**

Plaintiff suffered permanently disabling injuries when he swerved to avoid an 18-wheel tractor-trailer operated by defendant’s agent, causing his own truck to overturn. The

accident aggravated a previously asymptomatic spondylitic spinal disease, resulting in chronic neck pain, restricted cervical range of motion, numbness, and mental anguish. Plaintiff also experienced significant loss of earning capacity, having been medically precluded from driving trucks and unable to find light-duty work, and he lost his ability to pursue former hobbies and manage a small business due to ongoing pain. Jury awarded \$141,000 for past loss and harm and \$359,000 for future loss and harm (\$500,000 total), affirmed without remittitur (PDV = \$1,028,815).

"The record would not support a finding of any juror misconduct, bias, passion, prejudice, corruption, or improper motive. Accordingly, this Court has no authority to reduce the award of compensatory damages."

J.B. Hunt Transp., Inc., 681 So.2d at 1363.

■ **McCann v. Lee, 679 So.2d 658 (1996).**

Seventy-eight-year-old patient was negligently misdiagnosed with rectal cancer, leading to unnecessary radical surgery that permanently removed his rectum and caused a colostomy, impotence, depression, and ongoing emotional distress for the remaining eight months of his life; wife suffered corresponding loss of consortium. Jury awarded \$1,000,000 for compensatory damages (affirmed) and \$1,000,000 to the wife for loss of consortium (reduced by remittitur to \$250,000). (PDV = \$2,052,778).

"The plaintiff claimed damages for Mr. Lee's mental anguish and emotional distress. We recognize that those are not items for which a precise amount of damages can be assessed. In considering whether a jury verdict awarding compensatory damages is excessive, we must view the evidence from the injured party's perspective and determine what the evidence supports in terms of the injured party's suffering."

McCann, 679 So.2d at 660.

■ **Brown v. Lawrence, 632 So.2d 462 (Ala. 1994).**

Rear-end collision victim sustained chronic neck and back injuries (brachial neuritis/radiculitis) causing 20% permanent impairment, severe depression, and loss of family life. \$38,000 (past) and \$162,000 (future) compensatory damages affirmed without remittitur (PDV = \$82,652 and \$352,360).

"A court may not substitute its judgment for that of the jury when the jury has returned a compensatory verdict that is clearly supported by the evidence, nor may it conditionally reduce a jury verdict merely because it believes that the verdict overcompensates the plaintiff."

Brown, 632 So.2d at 464.

■ **Sears Roebuck & Co. v. Harris, 630 So.2d 1018 (Ala. 1993).**

Multiple plaintiffs suffered fatal and nonfatal carbon-monoxide poisonings after a gas water heater designed for natural gas was improperly converted to LP gas in a mobile home; one death (Joyce Simpson) and four injury claims resulted. Decedent's estate awarded \$4,000,000 for wrongful death; surviving plaintiffs awarded \$250,000–\$1,500,000 after remittiturs for acute carbon-monoxide poisoning causing

blurred vision, aggravated hypertension, chronic dizziness, nausea, depression, and mental anguish. All punitive damages (\$6.5 million total) and compensatory remittiturs (\$851,001 total) affirmed, with total recovery of \$7,351,001 (PDV = \$16,454,894).

"The right to a trial by jury is a fundamental, constitutionally guaranteed right, Art. I, § 11, Const.1901, and a jury verdict may not be set aside or remitted unless the verdict is flawed, thereby losing its constitutional protection..."

Sears, Roebuck & Co., 630 So.2d at 1033, as modified on denial of reh'g (Jan. 7, 1994).

■ **Precise Engineering Inc. v. LaCombe, 624 So.2d 1339 (Ala. 1993).**

Plaintiff suffered permanent loss of bladder and bowel control, chronic back and leg pain, and ongoing mental anguish, along with substantial medical expenses and past and future wage loss. \$2.7 million in compensatory damages affirmed without remittitur (PDV = \$6,031,265).

"Precise Engineering's final argument is that the jury's award of \$2.7 million in compensatory damages is excessive. After carefully reviewing the record, however, we conclude that the jury's verdict is clearly supported by the evidence. LaCombe presented evidence that he suffered extensive and severe personal injuries as a result of his accident, including permanent loss of control over his bladder and bowels; that he continues to suffer pain in his back and legs; and that he has suffered, and will continue to suffer, mental anguish as a result of his injuries... Given the evidence of LaCombe's permanent injuries and his pain and suffering, we cannot conclude that the amount of the jury award, which was based on a credit for the amount of the settlements with the other defendants, was excessive."

Precise Eng'g, Inc., 624 So.2d at 1343.

■ **CSX Transport v. Day, 613 So.2d 883 (Ala. 1993).**

Plaintiff sustained extensive and severe personal injuries that caused permanent physical disfigurement, required numerous medical procedures, and resulted in chronic lifelong pain. \$800,000 in compensatory damages, affirmed without remittitur (PDV = \$1,782,165).

"...[W]e have narrowed the scope of our holding in *Hammond* so that it does not apply to an award exclusively for compensatory damages, where the award is clearly supported by the record... It is also clear from the record that Day suffered extensive, severe personal injuries as a result of his accident, including some permanent physical disfigurement. Day has undergone numerous medical procedures, and the evidence indicates that he will have chronic pain for the rest of his life. The jury apparently awarded Day a substantial sum to compensate him for his pain and suffering, and given the testimony that Day's economic loss totaled \$488,537 and given the evidence regarding pain and suffering, we conclude that the amount awarded is not excessive."

CSX Transp., Inc., 613 So.2d at 885-86.

■ **Werner v. Henderson, 600 So.2d 1005 (Ala. 1992).**

Severe and permanent injuries resulting from an automobile collision, including a fractured sternum that healed improperly and left visible chest deformity, chronic pain, and lifelong physical limitations, as well as anxiety, depression, and sleep disturbance. \$667,037.50 in compensatory damages, affirmed without remittitur (PDV = \$1,534,667).

"In considering the amount of the jury verdict, each case must be determined on its own facts and a court of review may not substitute its judgment for that of the jury." ... "Based on the foregoing and recognizing that the interest of Henderson, as the victim, must be foremost in our mind when reviewing the propriety of the compensatory damages award, see *Bridges v. Clements*, 580 So.2d 1346 (Ala.1991), we cannot say that the compensatory damages award of \$667,037.50 exceeds an amount that will reasonably compensate Henderson."

Werner, 600 So.2d at 1008, 1009.

■ **Moore v. Mobile Infirmary, 592 So.2d 156 (Ala. 1991).**

Plaintiff experienced severe, permanently disabling complications following negligent medical treatment during hospitalization, arising from anesthesia-related surgical care. The jury awarded damages exceeding Alabama's \$400,000 statutory cap on noneconomic damages; the Alabama Supreme Court struck down the cap as unconstitutional and reinstated the full jury verdict without remittitur (PDV = \$891,083).

"... [T]his Court has consistently regarded the authority to interfere with the jury's findings on the amount of damages as one to be exercised with great caution... The jury's role in fixing the amount of damages has been regarded as particularly sacrosanct in cases involving damages not susceptible of precise measurement... This Court has often cautioned against interference with a jury's damages assessment unless the particular assessment is flawed by bias, passion, prejudice, corruption, or other improper motive." ... "[I]n cases involving damages incapable of precise measurement, a party has a constitutionally protected right to receive the amount of damages fixed by a jury unless the verdict is so flawed by bias, passion, prejudice, corruption, or improper motive as to lose its constitutional protection. As a corollary to that principle, the soundness of a jury's findings on the issue of damages must be evaluated on a case by case basis."

Moore, 592 So.2d at 162.

■ **Bridges v. Clements, 580 So.2d 1346 (Ala. 1991).**

Worker sustained a leg injury after stepping through an air vent in the floor of an industrial oven. The injury required three arthroscopic surgeries, extensive rehabilitation, and resulted in a five percent permanent partial impairment of the leg, with ongoing pain and discomfort expected for life. \$71,535 verdict, including approximately \$50,852.64 for pain and suffering, affirmed without remittitur (PDV = \$169,587).

"Because the interest of the victim must always be kept foremost in mind when reviewing the propriety of a compensatory damages award, ..., we cannot say that the jury's award for pain and suffering (past or future) exceeds

an amount that will reasonably compensate Clements." *Bridges*, 580 So.2d at 1349, internal citations omitted.

■ **Pepsi Cola Bottling Co. of Luverne v. Allen, 572 So.2d 434 (1990).**

Injuries included a broken nose, two fractured teeth requiring crowns, a neck and shoulder injury resulting in a 5-10% permanent impairment to the body as a whole, plastic surgery, and a left knee injury requiring two surgeries and resulting in an 8% impairment to the left leg and a 3% impairment to the body as a whole. \$250,000 verdict in compensatory damages, affirmed without remittitur (PDV = \$619,694).

"Whether damages awarded in a personal injury case are excessive depends on the facts of the particular case. This Court will not interfere with a damages award unless the award shocks the judicial conscience or is so great as to indicate that it is a product of bias, passion, or prejudice." *Pepsi Cola Bottling Co. of Luverne*, 572 So.2d at 436, internal citation omitted.

■ **Container Corp. of America v. Crosby, 535 So.2d 154 (Ala. 1988).**

Plaintiff suffered severe and permanent injuries when struck by industrial machinery. \$400,000 verdict in compensatory damage, affirmed without remittitur (PDV = \$1,095,439).

This court has long recognized that the trial court is accorded a large measure of discretion in determining whether to grant or deny remittitur... Therefore, we agree with the trial court that the jury verdict was within the evidentiary limits of actual, or compensatory, damages, even though punitive damages also could have been assessed."

Container Corp. of Am., 535 So.2d at 158.

■ **Consolidated Freightways v. Pacheco-Rivera, 524 So.2d 346 (Ala. 1988).**

Accident resulted in the death of Plaintiff's husband, and injuries to Plaintiff and her son. Plaintiff lost consciousness due to a head injury, suffered numerous cuts and bruises to her face, and injured her left ankle, was hospitalized for six days and missed two and a half months of work; a 5-10% likelihood of future seizures. Plaintiff's son sustained multiple abrasions and bruises to his head, trunk, and chest, and was hospitalized for four days. The jury awarded \$525,000 for wrongful death, \$250,000 to Plaintiff for personal injuries, and \$100,000 to Plaintiff's son for his personal injuries. The trial court ordered remittiturs, reducing Plaintiff's award by \$150,000 (to \$100,000) and son's by \$85,000 (to \$15,000). The Alabama Supreme Court affirmed (PDV = \$1,441,154, \$274,506, and \$41,176).

Evidence that "[a]fter four or five days in the hospital, she saw a doctor one other time to remove some sutures and then, according to her testimony, [Plaintiff Mary Pacheco-Rivera] was OK, her son was OK, and she was back on her job in about two to two and one half months after the accident," led trial court to concluded "[t]his verdict

shocked the conscience of the court. Therefore, it is the court's duty to require a very substantial remittitur." Supreme Court affirmed, stating "[w]e have examined the record and the trial court's orders and we cannot say that the trial court's orders of remittitur were palpably wrong."

Consol. Freightways, Inc., 524 So.2d at 352-53.

■ ***Davison v. Mobile Infirmary*, 518 So.2d 675 (Ala. 1986).**

Medical-malpractice action rendering plaintiff totally and permanently blind; her husband sought damages for loss of consortium. The jury awarded \$5,000,000 to plaintiff and \$3,000,000 to her husband, but the trial court ordered remittiturs reducing the awards by \$4,000,000 and \$2,650,000, respectively, as conditions for denying a new trial. The Alabama Supreme Court conditionally affirmed, holding the trial court properly applied *Hammond* standards and emphasizing that compensatory verdicts may only be reduced to remove bias or prejudice (PDV = \$3,990,580).

"At any rate, where, as here, the only claim is for compensatory damages, the 'degree of culpability of defendants' is not an appropriate consideration in testing the 'excessiveness' ground for a new trial... In other words, the trial court must exercise extreme caution, as mandated by *Hammond*, not to reduce the jury award simply because a lesser sum is perceived by the trial court as a reasonable and adequate recovery; rather, the trial judge must determine the maximum amount of money the jury could have awarded to these plaintiffs, as reasonable and adequate compensation for their injuries and damages, so that the verdict, as reduced by the order of remittitur, is not the product of bias, passion, or prejudice." Stated in the context of Ms. Davison's claim, are any and all sums awarded by a jury in excess of \$1,000,000, for negligently induced blindness, necessarily and as a matter of law, the product of bias, passion, prejudice, or other improper motive?"

Davison, 518 So.2d at 678-79.

■ ***Coca-Cola Bottling Co. Montgomery v. Parker*, 451 So.2d 786 (Ala. 1984).**

Plaintiffs ingested glass particles from a Coca-Cola bottle and suffered brief discomfort and sore throats, with minimal lingering fear of bottled beverages and \$15 in proven monetary loss. Verdicts of \$10,000 each, remitted to \$5,000 per plaintiff. (PDV = \$15,552).

"The general principles of reviewing excessive damages are well established. Jury verdicts carry with them a presumption of correctness, ..., especially where damages awarded are for pain and suffering... That presumption is strengthened by the trial court's denial of a motion for new trial... Where, as here, the issue is whether damages awarded for personal injuries are excessive, the disposition depends on the facts of the particular case."

Coca-Cola Bottling Co., 451 So.2d at 788, internal citations omitted.

■ ***City of Tallassee v. Harris*, 431 So.2d 1177 (Ala. 1983).**

Plaintiff sustained injuries to her neck, shoulder, wrist, left lower back and left hip, with testimony that these injuries would be permanent, and minor plaintiff sustained undisclosed injuries as a result of a head-on collision. Verdicts of \$15,000 to Plaintiff and \$40,000 to minor Plaintiff, affirmed without remittitur (PDV = \$48,802, and \$130,140).

"Assessment of damages is left largely to the discretion of the jury, in the first instance, and to the discretion of the trial judge on motion for new trial. A jury's award of damages will not be disturbed unless it is so excessive as to indicate passion, prejudice, corruption, or mistake... Based on Dr. Eagleson's testimony concerning the chronic and long lasting nature of the injuries suffered by Hazel Hammock, we do not find these damages excessive to the extent that they indicate passion, prejudice, corruption or mistake, and thus we affirm the trial court's decision not to disturb the jury's verdict."

City of Tallassee, 431 So.2d at 1184, internal citation omitted.

■ ***Fields v. Parker*, 361 So.2d 356 (Ala. 1978).**

Plaintiff, a 76-year-old automobile passenger, sustained neck and lower-back injuries with chronic pain and paravertebral muscle spasms after her car was struck from the rear by defendant's truck. Verdict of \$22,000, ordered reduced to \$14,500 as a condition of denying a new trial, affirmed (PDV = \$71,297).

"Historically, this Court has accorded the trial court a large measure of discretion, reviewable nevertheless, in determining whether to grant a new trial and in imposing conditions of remittitur upon that determination." ... "In sum, upon examination of the entire record we cannot state that the trial court's reduction of the jury's award from \$22,000.00 to \$14,500.00 represents a plain and palpable error, regardless of our own beliefs regarding any sum to which the plaintiff might have been entitled."

Fields, 361 So.2d at 361.

■ ***Beloit Corp. v. Harrell*, 339 So.2d 992 (Ala. 1976).**

Plaintiff's hands were drawn into the in-running nips of a papermaking machine, resulting in virtual traumatic amputations (only 5% function remaining in each hand and 75% permanent partial disability to the body as a whole). Verdict of \$800,000, affirmed (PDV = \$4,555,023).

Where, as here, there is no set standard for the admeasurement of damages but the damages to be awarded are left to the sound discretion of the jury, a remittitur or a new trial should not be ordered on the ground of excessiveness of the jury's verdict except in those cases where the court can clearly see that the verdict has been reached on account of bias, passion, prejudice, corruption, or other improper motive or cause ... And only where the damages allowed are so excessive as to warrant the belief that the jury must have been misled by some mistaken view of the merits of the case should the court interfere and set the verdict aside ... also, where the trial court refuses to grant a new trial

because he does not believe the verdict is excessive, the favorable presumption attending the jury's verdict is thereby strengthened.

Beloit Corp., 339 So.2d at 999.

■ ***Jackson v. Brown*, 49 Ala. App. 55, 268 So.2d 837 (1972).**

Plaintiff sustained a forehead laceration requiring 36 stitches, knee laceration, cracked teeth, back and right-arm pain, headaches with residual numbness near the scar, four weeks lost work, and ongoing headaches. Verdict of \$7,000, affirmed conditionally, on \$65 remittitur to \$6,935 (PDV = \$50,600).

Where quantum of damages is not susceptible of an exact pecuniary estimate, amount to be allowed rests largely in discretion of jury... Damages for physical pain and mental anguish are in large measure discretionary and the rule is not to reverse on that account unless amount is so excessive or inadequate as to indicate prejudice, passion, partiality or corruption... We cannot say that under the facts of this case as presented by the record the verdict is excessive.

Jackson, 49 Ala. App. at 60, 268 So.2d at 843, internal citations omitted.

■ ***Tombrello v. McGhee*, 282 Ala. 408, 211 So.2d 900 (1968).**

Plaintiff sustained personal injuries from a motor vehicle collision. Verdict for \$13,000 in compensatory damages under a negligence count and \$17,000 in punitive damages under a wantonness count, totaling \$30,000. The trial court ordered a \$5,000 remittitur and then denied the motion for a new trial, leaving a final judgment of \$25,000 (PDV = \$232,393).

Appellant's assignments of error 28, 29 and 30 all refer to the excessiveness of the verdict. As we noted above, after a motion for a new trial was filed, the trial court ordered a remittitur of \$5,000 and then overruled the motion for new trial. This creates a favorable presumption as to the correctness of the verdict. We see nothing to indicate that the verdict was reached on account of bias, passion, prejudice, corruption or other improper motive."

Tombrello, 282 Ala. at 411, 211 So.2d at 903.

■ ***Robbins v. Voigt*, 280 Ala. 207, 191 So.2d 212 (1966).**

Plaintiff suffered soreness in her chest, an aggravation of a preexisting female condition, and resulting weakness and bed confinement for several weeks. Verdicts of \$2,000 to the wife and \$4,000 to the husband for loss of consortium and property damage; no remittitur was ordered and the verdicts were affirmed (PDV = \$59,996).

"The Supreme Court will not substitute its judgment, in respect to the amount of damages awarded, for that of the jury and court below, unless the amount is so excessive, or so grossly inadequate, as to be indicative of prejudice, passion, partiality or corruption on the part of the jury." ... "There is no yardstick by which compensatory damages for pain and mental suffering can be measured and the ascertainment of the amount plaintiff is due

as recompense for these elements of damage must of necessity be left to the sound discretion of the jury, subject only to correction by this court for clear abuse or passionate exercise." ... "We will not disturb the verdict for Mrs. Voigt because, after a review of the evidence and the trial proceedings as reflected by the record before us, we do not find any indication that the jury was wrongfully influenced."

Robbins, 280 Ala. at 213, 191 So.2d at 217.

■ ***Durham v. Sims*, 279 Ala. 516, 187 So.2d 558 (1966).**

Plaintiff sustained head and back injuries, including bruising and tenderness in the lumbar and hip regions, severe headaches, dizziness, and narrowing of the intervertebral spaces in the spine resulting in partial and lasting disability. Verdict of \$4,500, affirmed without remittitur (PDV = \$44,800).

"Whether damages awarded for personal injuries are excessive depends on the facts of the particular case... There is no fixed standard for ascertainment of compensatory damages recoverable here for physical pain and mental suffering, but the amount of such award is left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise of that discretion."

Durham, 279 Ala. at 517, 187 So.2d at 559, internal citation omitted.

■ ***Stringfellow v. Rambo*, 277 Ala. 349, 170 So.2d 494 (1965).**

Plaintiff sustained neck and cervical spine injuries resulting in pain, stiffness, limited motion, and a 10-15% permanent partial disability. Verdict of \$17,000, affirmed without remittitur (PDV = \$173,090).

"There is no yardstick by which compensatory damages for pain and suffering can be measured, and the ascertainment of the amount due plaintiff for such damages must be left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise... The verdict of the jury should not be interfered with merely because, in the opinion of the court, the jury gave too little or too much, and the authority vested in courts to disturb a jury verdict on the ground of excessiveness should be exercised with great caution."

Stringfellow, 277 Ala. at 350, 170 So.2d at 495.

■ ***Langdon v. Miller*, 276 Ala. 195, 160 So.2d 479 (1964).**

Plaintiff sustained burns and scarring to the back from a liquid chemical spilled or poured by defendant physician during treatment, resulting in pain, suffering, disfigurement, and medical expenses. Verdict of \$4,000, affirmed without remittitur (PDV = \$41,122).

"There is no fixed standard for ascertainment of compensatory damages recoverable here for physical pain and mental suffering, but the amount of such award is left to the sound discretion of the jury... The present value of a dollar as compared with its value in former

years must be considered in determining whether the amount awarded is excessive.”

Langdon, 276 Ala. at 196, 160 So.2d at 480.

■ ***W. S. Fowler Rental Equipment Co. v. Skipper*, 276 Ala. 593, 165 So.2d 375 (1963).**

Plaintiff sustained a severely injured right hand with critically decreased utility, plus painful injuries to the body and leg; he was hospitalized for nine days and unable to work for six months. Verdict \$10,000, affirmed without remittitur (PDV = \$105,875).

“On the matter of excessiveness of the verdict, we have said that each case must be governed by its own facts and judged accordingly... We have also said that there is no yardstick by which compensatory damages for pain and mental suffering can be measured, and the ascertainment of the amount the plaintiff was due as compensation for these elements of damage must of necessity be left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise.”

W. S. Fowler Rental Equip. Co., 276 Ala. at 604, 165 So.2d at 386, internal citation omitted.

■ ***Carlisle v. Miller*, 275 Ala. 440, 155 So.2d 689 (1963).**

Plaintiff sustained serious bodily injuries when his tractor-trailer was struck from the rear by a speeding motorist traveling 70–80 mph, causing the truck to jackknife and overturn. The impact resulted in painful personal injuries. Verdict \$25,460, affirmed without remittitur (PDV = \$267,909).

“The verdict of a jury should not be interfered with merely because in the opinion of the court the jury gave too little or too much...; and the authority vested in the courts to disturb a verdict of the jury on the ground of excessiveness is one which should be exercised with great caution... Where, as here, there is no set standard for the admeasurement of damages but the damages to be awarded are left to the sound discretion of the jury, a remittitur or a new trial should not be ordered on the ground of excessiveness of the jury’s verdict except in those cases where the court can clearly see that the verdict has been reached on account of bias, passion, prejudice, corruption, or other improper motive or cause.”

Carlisle, 275 Ala. at 444, 155 So.2d at 692, internal citations omitted.

■ ***Green v. DeGrado*, 273 Ala. 244, 139 So.2d 342 (1962).**

Consolidated actions by husband and wife for injuries and damage growing out of auto collision. Mrs. DeGrado sustained a whiplash injury to the cervical spine, with muscle spasms, limitation of neck and back motion, and recurring pain in the neck, right shoulder, and chest, accompanied by headaches that persisted for nearly two years following the accident. Mr. DeGrado sustained a whiplash injury involving the cervical spine and back, an acute sprain of the right knee, and an acute sprain of the temporal mandibular joint, resulting in pain, headaches, and limited motion. Verdicts of \$2,500 for Mrs. DeGrado and \$5,000 for Mr. DeGrado, affirmed without

remittitur (PDV = \$26,561 and \$53,113).

“There is no yardstick by which compensatory damages for pain and mental suffering can be measured and the ascertainment of the amount Mrs. DeGrado is due as recompense for these elements of damage must of necessity be left to the sound discretion of the jury, subject only to correction by this court for clear abuse or passionate exercise.”

Green, 273 Ala. at 245–46, 139 So.2d at 344.

■ ***Mordecai v. Cardwell*, 270 Ala. 723, 121 So.2d 898 (1960).**

Consolidated actions by husband and wife for personal injuries sustained by wife, and for loss of her services, predicated upon injuries sustained by her in a taxicab accident. Mrs. Cardwell suffered superficial injuries to her eye, knee, and elbow, and a severe cervical sprain with some tearing of ligaments, causing nerve damage, weakness in her left hand, and limited neck motion, requiring traction for over a year. Verdicts of \$3,500 for Mrs. Cardwell, affirmed without remittitur (PDV = \$38,141) and \$1,500 for Mr. Cardwell, remitted to \$1,000 (PDV = \$10,897).

“There is no yardstick by which compensatory damages for pain and mental suffering can be measured and the ascertainment of the amount plaintiff is due as recompense for these elements of damage must of necessity be left to the sound discretion of the jury, subject only to correction by this court for clear abuse or passionate exercise.”

Mordecai, 270 Ala. at 726, 121 So.2d at 900.

■ ***Brandwein v. Elliston*, 268 Ala. 598, 109 So.2d 687 (1959).**

Plaintiff slipped and fell on an excessively waxed floor, sustaining a fracture at the base of her femur that required 57 days of hospitalization, traction, and bone graft surgery. She was unable to work for 19 months. Verdict of \$15,000, affirmed without remittitur (PDV = \$165,613).

“This court has laid down the principle that a verdict will not be disturbed as excessive where the trial court has refused to disturb the amount unless so excessive as to indicate passion, prejudice, corruption or mistake... Our cases consistently hold that the present value of a dollar as compared with its value in former years must be considered in determining whether the amount awarded by a jury is excessive.” ... “In cases of this character, even the trial court will not set aside the verdict of the jury merely because, in its opinion, the jury gave too much or too little; and when the trial court has refused to disturb a verdict on account of the amount recovered, the appellate court is very reluctant to substitute its judgment for that of the jury and the court below. We will not do so unless the amount is so excessive, or so grossly inadequate, as to be indicative of prejudice, passion, partiality, or corruption on the part of the jury.”

Brandwein, 268 Ala. at 603, 109 So.2d at 690–91.

■ ***Louisville and NR Co. v. Tucker*, 262 Ala. 570, 80 So.2d 288 (1955).**

Plaintiff suffered a permanent traumatic brain injury with hemorrhagic contusion, retrograde amnesia, chronic dizziness and balance loss requiring a cane, left-sided weakness, persistent headaches, memory and concentration deficits, personality change, and total occupational disability from farm work. Verdict of \$50,000, affirmed without remittitur (PDV = \$598,875).

"Our cases consistently hold that the present value of a dollar as compared with its value in former years must be considered in determining whether the amount awarded by a jury is excessive... Considering the elements of damage in the case and remembering that the authority vested in courts to disturb the verdict of a jury on the ground of excessive damages is one which should be exercised with great caution and discretion, we are constrained to hold that the ruling of the court refusing to set aside the verdict should be upheld. We are unable to say that the amount of the verdict is the result of passion, prejudice, partiality or corruption on the part of the jury. We do not feel authorized to set the verdict aside especially in the face of the refusal of the trial court to do so after he heard the evidence and saw the plaintiff before him."

Louisville & N.R. Co., 262 Ala. at 581, 80 So.2d at 298, internal citations omitted.

■ **Montgomery City Lines v. Davis**, 261 Ala. 491, 74 So.2d 923 (1954).

Plaintiff sustained back, neck, and right-knee injuries (neck strain/whiplash with disputed permanence) after a rear-end collision, with associated wage loss. Verdict of \$8,000, affirmed without remittitur (PDV = \$96,350).

Reviewing court will substitute its judgment for that of the jury and trial court on the question of damages only if the amount is so excessive or so grossly inadequate as to be indicative of prejudice, passion, partiality or corruption on the part of the jury."

Montgomery City Lines, 261 Ala. at 495, 74 So.2d at 926.

■ **Austin v. Tennessee Biscuit Co.**, 255 Ala. 573, 52 So.2d 190 (1951).

Plaintiff sustained neck and back injuries, pain and mental suffering, and a cracked tooth in an automobile collision. Verdict of \$1,875 total damages, of which \$917 represented compensatory damages for pain and suffering (PDV = \$23,241).

"There is no yardstick by which compensatory damages for pain and mental suffering can be measured and the assessment of the amount plaintiff is due as recompense for these elements of damage must be left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise."

Austin, 255 Ala. at 579, 52 So.2d at 195.

■ **Al DeMent Chevrolet Co. v. Wilson**, 252 Ala. 662, 42 So.2d 585 (1949).

Plaintiff sustained minor soreness, while his wife suffered slight bruises, headaches, and backaches that limited her ability to perform household duties following an automobile collision. Verdict of \$2,000, primarily for the plaintiff's loss

of his wife's companionship, consortium, and services. The court found the verdict excessive and ordered a remittitur, reducing the award to \$1,400 (PDV = \$19,057).

Verdict remitted from \$2,000 to \$1400 where "[d]amages to the plaintiff's automobile, to be generous in the estimate, did not exceed \$230, nor did the medical expenses and doctor bills for treating plaintiff's wife exceed \$100. His own personal injuries were practically nil, consisting of a little soreness after the accident. It would seem, then, that the \$2,000 verdict was addressed largely to recompensing the plaintiff for the loss of companionship, consortium, and services of his wife by reason of her own injuries... She received no broken bones and her bruises were slight. X-rays were taken after the accident and there was no testimony that they disclosed any apparent injuries."

Al DeMent Chevrolet Co., 252 Ala. at 666, 42 So.2d at 588.

■ **Birmingham Elec. Co. v. Howard**, 34 So. 2d 830 (Ala. 1948).

Plaintiff sustained superficial head and knee injuries and a severely bruised and sprained back, causing prolonged pain, restricted motion, and recurring muscle spasms that impaired his ability to perform farm work. Verdict of \$1,750, affirmed without remittitur (PDV = \$23,588).

The proposition as to the excessiveness of the damages, raised by the motion for a new trial, is not so easy of solution. Each case must be governed by its own facts and adjudged accordingly... There is no yardstick by which compensatory damages for pain and mental suffering can be measured and the ascertainment of the amount the plaintiff is due as recompense for these elements of damage must of necessity be left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise."

Birmingham Elec. Co., 250 Ala. at 423, 34 So.2d at 831-32, internal citations omitted.

■ **Central of Georgia Railway Co. v. Robertson**, 206 Ala. 578, 91 So. 470 (1921).

Plaintiff, a railroad passenger, suffered a fracture of the transverse process of a vertebra with probable permanent effects, causing back pain and impeded walking. Verdict of \$19,000, affirmed on condition of remittitur to \$12,000 (PDV = \$217,191).

"The plaintiff was 21 years old when injured. After getting out of the car, he walked around, but felt a pain in his back; and still has pain there when he bends over... The jury on former trial fixed the damages at \$8,000; this jury rendered verdict for \$19,000. The jury no doubt was prompted by partiality or prejudice, neither of which should enter into their deliberations or conclusions. Therefore we conclude from the evidence that the damages are excessive ... If plaintiff will file consent in writing as provided by statute, within 30 days, for this judgment to be reduced to \$12,000, this case will be affirmed, otherwise it will be reversed and remanded."

Cent. Of Georgia Ry. Co., 206 Ala. at 581-82, 91 So. at 473.

■ **Hines v. Wimbish, 204 Ala. 350, 85 So. 765 (1920).**

Plaintiff, age 67, sustained spinal nerve injury causing limb insensibility, intense pain, serious impairment in walking, and deterioration in heart and general health. Verdict of \$25,000, affirmed upon condition of remittitur to \$15,000 (PDV = \$271,488).

“Taking her condition in the strongest light the evidence could, with any reason, cast upon it, and the whole data afforded by the record, our opinion is that the amount of the verdict (\$25,000) is much too high. Under the evidence, \$15,000 is, in the opinion of this court, the limit to which a calm, dispassionate judgment would warrant a recovery in the circumstances disclosed by this record.”

Hines, 204 Ala. at 352, 85 So. at 767.

■ **Liles v. Montgomery Traction Co., 7 Ala. App. 537, 61 So. 480 (1913).**

Plaintiff sustained injuries to his ankle after being thrown from a streetcar due to excessive speed, resulting in pain, difficulty walking, and partial permanent impairment of the ankle's strength. Verdict of \$1,000, affirmed without remittitur (PDV = \$37,734).

“As the quantum of damages is in such cases a matter of discretion for the jury, the trial court will not set aside a verdict for damages merely because of its opinion that the jury gave too much or too little. And, when a trial court has refused to disturb a verdict on account of the amount of the recovery, the appellate court is very reluctant to substitute its judgment for that of the jury and court below.” ... “The showing made by the record does not negative the conclusion that the jury was warranted by the evidence in the case in finding that the injury was not one which was likely to disable the plaintiff for any considerable time and was not as serious as he sought to make it appear, and that he was not justly entitled to recover as compensatory damages more than \$1,000.”

Liles, 7 Ala. App. at 538–39, 61 So. at 482.

■ **Central of Georgia Railway Co. v. Morgan, 161 Ala. 483, 49 So. 865 (1909).**

Plaintiff was negligently carried past his destination and exposed to cold for several hours at night, resulting in a cold and physical discomfort. Verdict of \$500, affirmed upon condition of remittitur to \$250 (PDV = \$8,900).

“If there was any evidence of physical pain or injury suffered as the proximate result of the negligence of the defendant's agent, which is actionable, then it would be impossible for the jury, the trial court, or this court to certainly ascertain the moneyed value of such injury or damage. There is no standard by which such damages can be certainly fixed or measured. It must be left to the discretion of the jury, to be ascertained and fixed by them in each particular case, and, of course, depends upon the evidence and circumstances of each particular case; and unless it appears to the trial or to the appellate court that there has been an abuse of this discretion by the jury, or that they have fixed the amount arbitrarily and without regard to the evidence, appellate courts will not disturb

the findings, because excessive or because inadequate.”
Cent. of Georgia Ry. Co., 161 Ala. at 487, 49 So. at 867.

CONCLUSION

Remittiturs are rarely if ever appropriate in cases where juries consider non-economic damages issues such as mental anguish and pain and suffering. Alabama's precedential opinions individually and collectively are powerful ammunition for opposing any efforts at remitting jury verdicts for compensatory damages in personal injury cases.



David Wirtes, Jr.

Dave is a member of Cunningham Bounds, LLC, in Mobile where he works behind the scenes on strategic planning, motion practice and appeals. Over his forty year career, Dave has participated in thousands of serious personal injury, wrongful death and business cases. He is admitted to practice before all state and federal courts serving Alabama and Mississippi, the Fifth and Eleventh Circuit Courts of Appeals, and the Supreme Court of the United States, and has

served in leadership at The Alabama Association for Justice, The American Association for Justice, The National Civil Justice Institute, Litigation Counsel of America and The American Institute of Appellate Practice.



Carmen Chambers

Carmen is an attorney at Cunningham Bounds in Mobile, Alabama, where she practices in the areas of product liability, industrial accidents, wrongful death, and complex litigation. She also focuses on strategic planning, motion practice, and appeals. Carmen earned her J.D. from Georgetown University Law Center, where she served as Senior Development Editor of the Georgetown Law Journal. Her service to the law school community earned her the Dean's

Certificate and a Certificate of Distinction for advocacy on behalf of the LGBTQ community. After nearly a decade at a corporate defense firm, where she was elected Shareholder, Carmen returned home to Mobile in 2025 to join Cunningham Bounds. Outside of her legal practice, Carmen also serves as Vice-Chair of the Alabama ACLU Board of Directors. Carmen received her B.A. from Yale University, where she competed in ballroom dance and performance poetry. She and her husband Jesse have one daughter, to whom Carmen speaks exclusively in French.



Maggie Utsey

Maggie is a proud native of Butler, Alabama. She earned her B.A. in English with a minor in Public Relations from the University of Alabama before going on to earn her J.D. from Cumberland School of Law. Maggie is admitted to practice in the United States District Courts for the Northern, Middle, and Southern Districts of Alabama. She is an active member of the Alabama Bar Association, Mobile Bar Association, Baldwin County Bar Association, and First Judicial Circuit

Bar Association. She is also involved in several professional organizations, including the Alabama Association for Justice, the American Association for Justice, the Mobile Bar Association Young Lawyers, and the South Alabama Trial Lawyers Association. At Cunningham Bounds, Maggie combines strong advocacy with a genuine commitment to helping clients navigate challenges and achieve meaningful results.