NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

PAUL GILL AND DIANE GILL, H/W	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
EXXON MOBIL CORPORATION	:	
Appellant	:	No. 2811 EDA 2024

Appeal from the Judgment Entered September 23, 2024
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 200501803

BEFORE: KUNSELMAN, J., NICHOLS, J., and SULLIVAN, J.

MEMORANDUM BY KUNSELMAN, J.: **FILED OCTOBER 15, 2026**

I. Introduction

In this negligence/product-defect-and-strict-liability case, Exxon Mobil Corp. appeals from the judgment entered in favor of Paul Gill for $725,000,000 and his wife, Diane, for $500,000.00. The jury found that Mobil Oil (an Exxon Mobil Corp. predecessor in interest)[1] negligently manufactured and sold defective gasoline that contained a carcinogenic ingredient – *i.e.*, benzene. Exxon neglected to preserve its sufficiency claim for appellate review. Furthermore, it fails to convince us that the trial court abused its discretion in any manner. Thus, we affirm.

II. Factual & Procedural Background

In 1974, Mr. Gill took a job at Cole's Garage, a service station in Potter County, Pennsylvania. He pumped gas and repaired cars. Mr. Gill also lived

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[1] Exxon and Mobil were separate entities that merged in 1999 to form the combined entity Exxon Mobil Corp. We refer to Exxon Mobil Corp. as Exxon.

in an apartment above the service station for a year. He worked at Cole's Garage for the next five years, in nine-hour shifts, for five to six days per week.

As part of his work, Mr. Gill used Mobil Oil's gasoline to clean car parts. This was a common practice for mechanics, because manufacturers of gasoline, like Mobil Oil, never warned them that the benzene in gasoline was a carcinogen that became airborne when the gasoline was exposed to air. Mobil Oil failed to warn Mr. Gill of this dangerous and potentially lethal defect in its product, even though "the American Petroleum Institute advised its members[, including Mobil Oil, that] there was no safe level of benzene exposure [in] 1948." N.T., 4/29/24, at 86.

Benzene most typically enters the body by inhaling it or by absorption through the skin. ***See id.*** at 58. It infiltrates the blood stream and forms a compound, damaging the DNA of stem cells in the bone marrow. The marrow begins producing cancerous blood cells. Benzene is therefore a well-known and proven cause of leukemia. The World Health Organization, Environmental Protection Agency, and National Toxicology Program all agree "that benzene is a carcinogen . . . ." ***Id.*** at 55.

When Mr. Gill pumped Mobil Oil's gas and used it to wash car parts, he did not wear a respirator or gloves. Mr. Gill wore no protective equipment, because he did not know Mobil Oil's gasoline was releasing carcinogenic benzene into his lungs and skin.

Mr. Gill left Cole's Garage in 1979. He became an EMT and instructor of other EMTs. In July of 2001, Mr. Gill married Diane, and the Gills merged their families from prior marriages. In 2018, Mr. Gill retired from his EMT career, and the Gills moved to a farm. They began raising show horses and had a family dog.

Then, in 2019, Mr. Gill contracted acute myeloid leukemia ("AML"). His exposure to Mobil Oil's gasoline 40 years prior at Cole's Garage "was a substantial factor contributing to the cause of Mr. Gill's AML." N.T., 4/30/24, at 88. Other benzene-containing products to which he had repeated exposure were also substantial factors contributing to his AML. ***See id.*** at 88-89.

Mr. Gill's leukemia took a drastic toll on his standard of living and the Gills' marriage. The first impact was when the accumulation of cancer in his blood caused a marked decline in Mr. Gill's physical strength. He began to notice the effects in May of 2019, when cutting trees. Mr. Gill became fatigued and went to a hospital, where they diagnosed him with leukemia. After a six-week stay and a battery of painful bone-marrow tests, physicians diagnosed him specifically with AML.

This severely depressed Mr. Gill. Multiple rounds of chemotherapy at Rochester Hospital ensued. Doctors were able to bring his AML into remission.

However, his weakened immune system permitted two cases of a food-borne bacteria to infect his colon. Mr. Gill suffered severe cramps, diarrhea, nausea, and burning mouth sores. He had to have several blood transfusions due to his critically low blood-cell count.

That July, Mr. Gill underwent a stem-cell transplant, which hospitalized him for a month. The transplant caused his immune system to attack his healthy organs: eyes, liver, and shoulders. Mr. Gill suffered loss of eye, liver, and skin function; chronic weakness; severe pain; and the stiffening of his joints. Physicians prescribed medications to stop his new white blood cells from attacking Mr. Gill's body, but that, in turn, made him a diabetic and insulin-dependent. As a result, he has suffered from seizures and has gone into diabetic coma.

In 2023, the immune-suppression medications gave Mr. Gill colorectal cancer. He underwent surgery to have a grapefruit-sized tumor and a foot of his colon removed. Two weeks later, Mr. Gill developed an infection from the surgery; he had extreme pain, could not sit down, and could not pass urine or waste. He had to receive five more rounds of chemo before the case went to a jury trial. The cancer has since spread to his liver, and he has two spots on his lungs that will require continued monitoring.

Since his leukemia diagnosis, Mr. Gill has had to isolate himself from friends and family for fear that he will contract diseases from them. Similarly, the Gills have had to sell their horses and rehouse their dog, because Mr. Gill can no longer be around animals, due to his weakened immune system. He is not able to hunt and fish as much as he would like. The Gills cannot go to the movies, to the beach, or travel as much as they would like, because Mr. Gill might become sick, he gets tired easily, and the sun hurts his eyes.

In addition, Mr. Gill's diagnosis greatly impacted the Gills' marriage. He cannot help his wife around the house or protect her the way he once did. Now, Mrs. Gill has to care for and protect him. Moreover, Mr. Gill will never be healed, as the cancer from his original leukemia keeps spreading to other parts of his body. He lives in constant pain and fear of losing his battle with cancer. Mr. Gill is worried that he will die and leave his family sooner than he otherwise would have, had he not contracted leukemia.

In May of 2020, the Gills filed this suit against Exxon and several other defendants.[2] They raised counts of negligence, gross negligence, breach of warranty, product-defect strict liability, battery, fraud, and loss of consortium.

During discovery, the Gills produced two physicians to testify as experts on the medical cause of Mr. Gill's leukemia. The first physician was Robert Laumbach, M.D., M.P.H., C.I.H., D.A.B.T. Dr. Laumbach, a professor at the Rutgers School of Public Health, with a master's degree in public health, spent over 25 years analyzing the negative health impacts of occupational and environmental agents, including carcinogens, such as benzene. The Gills offered him as an "expert in occupational and environmental medicine, its core

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[2] The other defendants were United States Steel Corporation; Radiator Specialty Company; Atlantic Richfield Company; CRC Industries, Inc.; Sunoco, LLC; Safety-Kleen Systems, Inc.; Shell Oil Company; Berryman Products, Inc.; Univar Usa, Inc.; Ashland, LLC; Brenntag Southwest; Union Oil Company of California; The Blaster Corporation; Illinois Tool Works, Inc.; Henkel Corporation; and Root Oil Company, Inc. Some of the other defendants were dismissed at various stages below. Most of them eventually settled with the Gills, and none of them is a party to this appeal.

disciplines of toxicology and epidemiology, and in industrial hygiene." Dr. Laumbach's Expert Report on Paul Gill, 3/7/22, at 3.

The Gills' second expert physician was Rory M. Shallis, M.D., a practicing hematologist-oncologist and assistant professor of medicine at Yale University School of Medicine. Dr. Shallis was a member of the Yale Cancer Outcomes, Public Policy and Effectiveness Research Center and board certified in internal medicine, hematology, and oncology. ***See*** Dr. Shallis' Expert Report on Paul Gill, 3/7/22, at 1-2. He regularly researched the causes of cancer and worked with "experts in the Yale School of Public Health to accomplish epidemiological research as it relates to leukemogenic exposures and the risk of MDS and AML development." ***Id.*** at 2.

Exxon filed a motion *in limine* to exclude Drs. Laumbach and Shallis as expert witnesses. It claimed that "their opinions are not based on generally accepted methodologies and lack a reliable scientific foundation." Motion *in Limine* to Exclude Medical Causation Experts at 2. It also filed a motion *in limine* to keep the doctors from telling the jury that there is no known amount of exposure to benzene at which it is not carcinogenic – what Exxon dubbed a "no safe threshold" theory. The trial court denied both motions, and the matter proceeded to a jury trial.

At the close of the Gills' case-in-chief, Exxon filed a motion for compulsory nonsuit on all counts in the Gills' complaint. As to the element of causation to prove negligence and product-defect strict liability, Exxon argued the Gills offered no proof that gasoline caused Mr. Gill's leukemia. According

to Exxon, they only proved that the benzene ***in*** Mobil Oil's gasoline caused Mr. Gill's leukemia. ***See*** Exxon's Memorandum of Law in Support of Motion for Nonsuit at 15 n.7 (quoting expert's testimony as "there is definitive evidence, as we've seen, that benzene and benzene in gasoline cause leukemia," N.T., 4/30/24, at 39).

The trial court partially dismissed the motion as moot, because the Gills had previously withdrawn their counts for battery and breach of warranty. ***See*** T.C.O., 5/7/24. The court granted the nonsuit as to the count for fraud and the Gills' prayer for punitive damages, but it denied the nonsuit as to the counts for negligence and product-defect strict liability. ***See id.***

On May 9, 2024, the jury found in favor of the Gills on both counts. It awarded Mr. Gill a total of $725,000,000 for the pain and suffering, embarrassment and humiliation, loss of enjoyment of life, and disfigurement that the leukemia caused him. The jury also awarded Mrs. Gill $500,000 for loss of consortium.

The following week, Exxon moved for post-trial relief and sought JNOV, a new trial, or remittitur of the verdict.

It requested JNOV on five bases. First, it claimed that, under the one-injury-one-recovery rule, a settlement agreement that the Gills reached with Root Oil prior to trial discharged any obligation of Exxon to compensate them. Second, the Gills offered insufficient evidence of product identification. Third, the Gills offered insufficient evidence of a causal link between Mobil Oil's gasoline and Mr. Gill's damages. Fourth, the Gills offered insufficient evidence

that Mobil Oil failed to warn Mr. Gill of a design defect in its gasoline. And fifth, the Gills offered insufficient evidence of a design defect in Mobil Oil's gasoline.

Exxon also sought a new trial on eight bases. First, Exxon asserted that it deserved a new trial, because the trial court permitted Drs. Laumbach and Shallis to testify as medical-causation expert witnesses. Second, the trial court allowed the doctors to tell the jury that there is no safe level of exposure to benzene. Third, the trial court refused to take judicial notice of the fact that gasoline is not carcinogenic. Fourth, the Gills' attorneys engaged in prejudicial misconduct during the jury trial. Fifth, the jury's damages award was shockingly excessive and against the weight of the evidence. Sixth, the jury's findings of design defect and failure to warn were against the weight of the evidence. Seventh, the jury's finding of no liability by 13 other defendants was against the weight of the evidence. And eighth, the trial court prejudiced Exxon by denying its motion to continue the jury trial.

Finally, Exxon sought remittitur of the verdict, because (1) the trial court used a verdict slip that separated the non-economic damages into four categories and (2) the total non-economic award was shockingly excessive to the trial court's conscience.

The Gills moved to mold the verdict to add delay damages.

Then, three-and-a-half months after the jury's verdict, on August 21, 2024, Exxon moved to supplement its motion for post-trial relief *nunc pro tunc*. It alleged that, on August 16, 2024, Exxon "discovered posts, by Juror

No. 2, in an online message board showing the influence of improper bias and outside information."[3] Exxon's Motion to Supplement Its Motion for Post-Trial Relief at 1. Exxon attached an exhibit to the motion showing a printout of May 13, 2024 posts in a blog, which Exxon believed Juror No. 2 had created and authored two posts. Juror No. 2 allegedly posted:

> . . . I think politics aside, Exxon is objectively a villain so I don't think this would upset anyone.
>
> I was on this trial the last two weeks. Selected for jury duty. The trial lasted 10 whole days and was extremely chaotic.
>
> Ultimately, we rocked their world for 725.5M.
>
> Early on in deliberations, we had 9 of 12 jurors willing to do 1.776 B in honor of Philadelphia. Such a wild jury TBH. Crazy experience. Don't say I didn't ever do anything for climate change lol.
>
> Get this, the morning before deliberations, the plaintiff offered to settle this case for 1.2 million. Exxon said no. They really didn't see this coming.
>
> Honestly, the best feeling ever seeing the defense counsel look like they were going to puke.
>
> * * *
>
> So I agree the entire legal system is wack.
>
> What I will say that made me extremely sick was that every single expert who testified, that's all they did for work. Just testify and get paid by companies to do "studies" that show the outcomes they want. They had experts from Harvard and Yale, etc. who would come in and basically tell you that

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[3] The messages appeared on the Ouddict: The Artisanal Oud Community, a blog focusing mainly on perfumes. The full, at-issue thread is available at https://www.ouddict.com/threads/exxon-trial-i-was-on-the-jury.7562/ (last visited 2/14/25).

> studies show smoking doesn't cause cancer (analogy, but same thing).
>
> It will totally go to appeal, and he will die before he ever sees a dime. I think perhaps Exxon may try and offer them a LOT less to avoid lengthy appeals process. I mean look, they expected this wouldn't cost them more than 1.2m even if they lost. So, they are probably a bit shellshocked.
>
> The reality is that gas companies have known for ages that benzene in high concentrations (in gas) causes leukemia. Their argument is that benzene stops having that effect if it's in gasoline. Which is wild to say. It's like saying nicotine is addictive but not cigarettes.
>
> In any event. It's not every day you get to be a part of sticking it to the man if you will. So, I feel lucky to have done something – albeit probably nothing really when all the appeals are over.

Id., Ex. A at 1-4. According to Exxon, "The newly discovered post-trial postings by Juror No. 2 underscore why the unprecedented and extreme verdict in this case cannot stand and any notion of the fair administration of justice requires a new trial." ***Id.***

The trial court heard oral argument on Exxon's motion for post-trial relief and the Gills' motion to mold the verdict. On September 12, 2024, the trial court entered orders granting the motion to mold the verdict, bringing the total verdict to $815,833,561.65. It denied Exxon's motion for post-trial relief as meritless and dismissed Exxon's motion to supplement its post-trial motion as untimely. This timely appeal followed.

III. Analysis

Exxon raises five issues at the outset of its brief as follows:

> 1. Did the trial court err in denying judgment as a matter of law [on the issue of causation]?
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> 2. [T]hrough motions *in limine* to preclude [the Gills'] experts and the "no safe threshold" testimony, is Exxon . . . entitled to a new trial?
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> 3. Did the trial court err in failing to grant a new trial or remittitur when the jury awarded $725.5 million in non-economic damages, with no evidentiary basis to support that award?
>
> 4. Did the trial court err in finding the . . . compensatory damages award neither punitive nor a violation of Exxon's due process rights?
>
> 5. Did the trial court abuse its discretion in refusing to grant a new trial or hold a hearing to assess post-verdict evidence revealing a juror's dishonesty during voir dire and the jury's consideration of prejudicial extra-record information?

Exxon's Brief at 2-3. We dispose of each issue in turn.

A. Exxon's Arguments on Proof of Causation

First, Exxon asserts that the trial court erred by refusing to grant it JNOV on the issue of causation. It contends the Gills failed to prove that Mobil Oil's gasoline caused Mr. Gill's leukemia, because the "trial record itself contains no evidence that Mobil gasoline had a benzene concentration of at least 2% or otherwise had a relatively 'high concentration' of benzene." ***Id.*** at 24. Exxon argues that, because the Gills failed to prove that Mobil Oil's gasoline was at least 2% benzene, there was no evidence to support Dr. Laumbach's expert opinion that the benzene in Mobil Oil's gasoline was a substantial factor that contributed to the cause of Mr. Gill's leukemia. ***See id.*** at 24-27.

Exxon also claims that Dr. Shallis' opinion that Mobil Oil's gasoline was a substantial contributing factor to Mr. Gill's leukemia is based entirely on Dr. Laumbach's "unsubstantiated exposure calculations." ***Id.*** at 28. "Because Dr. Laumbach's calculations are flawed, so too are Dr. Shallis's calculations relying on them." ***Id.***

The Gills respond that Exxon failed to make this argument to the trial court and thereby preserve it for appellate review. ***See*** Gills' Brief at 29. We agree.

"The issue of waiver presents a question of law, and, as such, our standard of review is *de novo*, and our scope of review is plenary." ***Trigg v. Children's Hospital of Pittsburgh of UPMC***, 229 A.3d 260, 269 (Pa. 2020).

"As a general matter, it is axiomatic that issues not raised in lower courts are waived for purposes of appellate review, and they cannot be raised for the first time on appeal." ***Id.*** (citing Pa.R.A.P. 302(a)). "Requiring issues to be properly raised first in the trial court ensures that trial judges have the opportunity to consider a potential appellate issue and correct any error at the first available opportunity." ***Id.*** (citation omitted). "It also promotes the orderly and efficient use of judicial resources, ensures fundamental fairness to the parties, and accounts for the expense attendant to appellate litigation." ***Id.***

Indeed, as the Pennsylvania Rules of Civil Procedure make clear, "post-trial relief may ***not*** be granted unless the grounds therefor . . . (2) are

specified in the motion . . . Grounds not specified [in the motion for post-trial relief] are deemed waived . . . ." Pa.R.C.P. 227.1(b)(2) (emphasis added).

Here, in Exxon's motions for compulsory nonsuit and for post-trial relief, it argued to the trial court that the Gills' experts opined that the benzene in Mobil Oil's gasoline was a carcinogen, without opining that Mobil Oil's gasoline itself was carcinogenic. In its motion for post-trial relief, Exxon specifically argued the following:

> 46. Fatal to [the Gills'] case at trial, there was no expert testimony, as required, that gasoline causes AML. Again, Dr. Laumbach admitted no regulatory body in the world classifies gasoline as a human carcinogen [***See*** live testimony of Dr. Robert Laumbach, TT, 4/30/24 PM, pp. 6:15-20 & 7:18-19 & 17:5-21 & 18:14-21:5 & 28:4-12 & 44:4-12 & 104:25-105:4].
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> 47. Markedly, instead of investigating and opining on the gasoline product for which Exxon was sued, Dr. Laumbach focused his opinions on benzene which, again, the expert admitted was a separate and distinct and wrong product [***See*** live testimony of Dr. Robert Laumbach, TT, 4/30/24 PM, pp. 6:15-20 & 22:9-12].
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> 48. Despite this fact, [the Gills'] experts based their general causation opinions upon evaluations of benzene conducted by agencies such as the International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), the Occupational Safety and Health Administration (OSHA), and the Agency for Toxic Substances and Disease Registry (ATSDR).
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> 49. However, just as these agencies have evaluated benzene, each agency has studied the relevant scientific and medical literature on gasoline and not one has ever found gasoline to be a human carcinogen – a fact [the Gills'] experts did not dispute when cross-examined. [***See*** live testimony of Dr. Robert Laumbach, TT, 4/30/24 PM, pp. 6:15-20 & 8:5-8 &

> 17: 5-21 & 20:15-25 & 21:1-5 & 39:12-20; ***See also*** live testimony of Dr. Rory Shallis, TT 5/2/24 PM, p. 47:17-21].
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> 50. Furthermore, the causation opinions proffered by Plaintiffs' experts are not supported by either the record or common sense.
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> 51. Specifically, [the Gills] experts failed to articulate a coherent and well-founded scientific explanation demonstrating Paul Gill's exposure to Mobil gasoline in the 1970's was a substantial factor in causing him to develop AML in 2019.
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> 52. Instead, the experts' opinions were explicitly predicated upon legally insufficient extrapolations, conjectures, and speculations without solid scientific foundation.
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> 53. At trial, [the Gills'] experts' testimony on causation was insufficient as neither expert opined on the level of Mr. Gill's alleged exposure to benzene specifically from Mobil's gasoline.

Exxon's Motion for Post-Trial Relief at 8-9.

Exxon extrapolated on this portion of its post-trial motion in a Brief in Support of Post-Trial Relief at 23-29. Therein, Exxon argued Drs. Laumbach and Shallis "failed to address . . . in [a] scientifically reliable manner [the] operative question here: whether exposure to ***gasoline***, a product completely distinct from benzene, is capable of causing AML." Exxon's Brief in Support of Post-Trial Relief at 23 (emphasis in original).

Exxon abandons those contentions on appeal. Exxon no longer argues that the experts failed to opine that exposure to gasoline can cause leukemia. Instead, it claims the Gills did not prove there was ***enough*** benzene in Mobil Oil's gasoline to render it carcinogenic to Mr. Gill. That is a different inquiry

from the question of "whether exposure to ***gasoline*** . . . is capable of causing AML." ***Id.*** at 23 (emphasis in original).

In its post-trial brief, Exxon did not argue to the trial court that the Gills failed to prove that Mobil Oil's gasoline was comprised of at least 2% benzene, and that, as a result, Dr. Laumbach's expert opinion on causation relied on facts not in evidence. ***See id.*** at 23-29. Exxon's claim that Dr. Laumbach's opinion relief on an unproven fact – *i.e.*, that Mobil Oil's gasoline was 2% benzene – is an entirely new contention on appeal. Exxon did not contend below that the "trial record itself contains no evidence that Mobil gasoline had a benzene concentration of at least 2% or otherwise had a relatively 'high concentration' of benzene." Exxon Mobil's Appellate Brief at 24.

Exxon may not make a new argument regarding causation for the first time on appeal. ***See*** Pa.R.A.P. 302(a). Hence, we dismiss its novel argument as waived.

Next, Exxon asserts that it is entitled to JNOV, because the "alternative causation theories [of the Gills'] experts are likewise insufficient to sustain the verdict." Exxon's Brief at 28. It believes that "[w]ithout record evidence to support Dr. Laumbach's calculations" – *i.e.*, the claim of error that Exxon waived above – "the 'no safe threshold' testimony is all that remains" to support Dr. Laumbach's expert opinion that the benzene in Mobil Oil's gasoline caused Mr. Gill's leukemia. ***Id.*** Exxon contends that this "alternative causation" cannot be sufficient evidence of causation as a matter of Pennsylvania law. ***See id.*** at 29-35.

Having dismissed Exxon's challenge to percentage-of-benzene-in-Mobil-Oil's-gasoline basis for Dr. Laumbach's opinion that Mobil Oil's gasoline caused Mr. Gill's leukemia as waived, we dismiss this challenge to the alternative causation theory as moot. "An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case . . . ." ***In re D.A.***, 801 A.2d 614, 616 (Pa. Super. 2002). "An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any . . . effect." ***Id.***

Even if this Court were to accept Exxon's argument on this theory and reject Dr. Laumbach's testimony that benzene is not safe for human exposure at any level, we would have no basis for granting relief. Dr. Laumbach's causation opinion would still be sufficient to place that issue before the jury, based on his calculation that Mr. Gill was exposed to the 2% benzene that comprised the Mobil Oil gasoline at Cole's Garage. Thus, the legal sufficiency of the experts' alternative causation theories is moot at this juncture.

Finally, in one paragraph, Exxon argues that we should reverse the order denying it JNOV on the grounds that the "trial court also erred in its proximate cause analysis." ***Id.*** at 35. It argues that the trial court needed to perform an analysis of proximate cause "***before*** sending a case to the jury." ***Id.*** at 36. (emphasis in original). According to Exxon, the trial court "did no such thing[.] If it had, there is no way it could have found proximate causation, as [Mr.] Gill and his experts sought to link conduct that is both attenuated and remote to a disease that most often occurs without any known cause." ***Id.***

Exxon cites ***Morena v. South Hills Health Sys.***, 462 A.2d 680, 683 (Pa. 1983), to support its contention that the trial court should address whether the plaintiff has introduced sufficient evidence to establish the elements of a *prima facie* case before sending the case to the jury. In ***Morena***, the defendants filed a motion for compulsory nonsuit and argued that they did not owe a duty to the plaintiff. The trial court agreed with the defendants' argument and granted the nonsuit.

Here, critically, Exxon never made a proximate-cause argument to the trial court in either its motion for a nonsuit or its motion for JNOV. In its motion for a nonsuit, Exxon claimed plaintiffs failed to prove a *prima facie* case of product liability. First, it claimed the Gills did not show Exxon manufactured the offending product (distinguishing benzene from gasoline). Exxon's Motion for Nonsuit at 12-13. Second, it argued the Gills did not establish general causation through legally sufficient expert testimony. ***Id***. at 13. Again, it argued that no expert opined that gasoline, as opposed to benzene, caused cancer. ***Id***. at 13-17. Exxon then contended that, because the Gills could not prove general causation, they could not prove proximate causation. ***Id***. at 17. Significantly, in this motion Exxon never argued about proximate cause, with the same argument is now raises on appeal, *i.e.,* that Exxon's conduct was "both attenuated and remote to a disease that most often occurs without any known cause." Exxon's Brief at 36.

Likewise, Exxon also never made a proximate cause argument in its post-trial motion for JNOV. As the Gills observe, Exxon's argument "suggests

that the trial court wrongly failed to enter JNOV *sua sponte*." Gills' Brief at 41. "The trial judge had no obligation to enter JNOV *sua sponte*." ***Id.***

Exxon's post-trial motions make no argument about proximate case. ***See*** Exxon's Motion for Post-Trial Relief at 8-9; ***see also*** Exxon's Brief in Support of Post-Trial Relief at 23-29. On appeal, Exxon concedes that the issue of proximate cause is a different inquiry than general and specific causation. It states, "In addition to assessing general and specific causation, a court must ***separately*** assess whether the defendant's conduct is too remote or insignificant to support liability." Exxon's Brief at 35. Yet Exxon made no claim below that the trial court should perform a separate proximate-cause analysis. Thus, the trial court was under no obligation to do so *sua sponte*.

By failing to present this argument to the trial court, Exxon deprived it of "the opportunity to consider [this] potential appellate issue and correct any error at the first available opportunity." ***Trigg***, 229 A.3d at 269. Therefore, unlike the defendants in ***Morena***, who properly argued their reasons for entry of a nonsuit, Exxon failed to preserve its proximate-cause argument for appellate review, and we dismiss it as waived.[4] ***See*** Pa.R.A.P. 302(a).

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[4] Even if Exxon preserved the proximate cause issue, we note that this issue is almost always a jury question. As the Supreme Court of Pennsylvania has stated:

> [w]hether in a particular case [the plaintiff has met its burden of proof] with respect to the element of causation is

(Footnote Continued Next Page)

Exxon failed to preserve most of its arguments regarding sufficient proof of causation, and that waiver renders its only preserved argument moot. Hence, we dismiss Exxon's first appellate issue as waived.

B. The Gills' Medical Experts

Next, Exxon contends that the "trial court should have granted [its] motion *in limine* to preclude Drs. Laumbach and Shallis from testifying and to preclude 'no safe threshold' testimony." Exxon's Brief at 36. It accuses the doctors of having "employed what they identified as standard methodologies in non-standard ways." ***Id.*** at 37. Exxon claims the Gills' experts' analysis of

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> normally a question of fact for the jury; the question is to be removed from the jury's consideration ***only where it is clear that reasonable minds could not differ on the issue. In establishing a* [p]rima facie *case, the plaintiff need not exclude every possible explanation*** . . . ; it is enough that reasonable minds are able to conclude that the preponderance of the evidence shows defendant's conduct to have been a substantial cause of the harm to plaintiff.

Summers v. Certainteed Corp., 997 A.2d 1152, 1163–64 (Pa. 2010) *(quoting* ***Hamil v. Bashline,*** 392 A.2d 1280, 1284–85 (Pa. 1978)) (emphasis added) (some punctuation omitted); ***see also Vattimo v. Lower Bucks Hosp., Inc.,*** 465 A.2d 1231, 1234 (Pa. 1983) (holding, where reasonable minds may differ, questions of causation are for the jury); ***Topelski v. Universal South Side Autos, Inc.,*** 180 A.2d 414, 419 (Pa. 1962) (holding where "reasonable difference of opinion as to whether the defendant's act was . . . a proximate cause of the injury, the matter is for the jury to decide"); ***Anderson v. Bushong Pontiac Co.***, 171 A.2d 771 (Pa. 1961) (holding that proximate cause almost always a question solely for the jury).

the Bradford Hill factors[5] relied primarily on temporality and improperly evaluated other factors based on benzene generally rather than gasoline exposure. Exxon also alleges the experts' differential diagnosis was flawed, because they failed to rule out idiopathic leukemia and failed to exclude other potential sources of Mr. Gill's benzene exposure. ***See id.***

It also asserts the trial court erroneously allowed the jury to determine whether Dr. Laumbach could attribute causation specifically to Mobil gasoline, despite his report not singling it out. According to Exxon, this improperly permitted the introduction of an undisclosed opinion and allowed distortion of accepted methodology. ***See id.*** at 38. Lastly, Exxon claims the trial court's reliance on cross-examination as a remedy was inadequate, particularly given the complexity of the scientific issues, and thus a new trial is warranted.

The record reflects that Exxon made only one of the above arguments in its motion for post-trial relief. In its motion for a new trial, based on the

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[5] The "Bradford Hill factors," a.k.a. Hill's criteria for causation, are nine factors used for evaluating epidemiological evidence for a causal relationship between a presumed cause and an observed effect; they are widely accepted as the indicators of causation by experts in public-health research. ***See*** Entry for "Bradford Hill Criteria," WIKIPEDIA: The ONLINE ENCYCLOPEDIA, available at https://en.wikipedia.org/wiki/Bradford_Hill_criteria (last visited 4/1/26). An English epidemiologist, Sir Austin Bradford Hill, first articulated his nine factors in 1965; he described them as "viewpoints from all of which we should study association before we cry causation." Austin Bradford Hill, "The Environment and Disease: Association or Causation?," *Proceedings of the Royal Society of Medicine*, 58 (5) at 295–300 (1965).

trial court's decision to allow the Gills' causation experts to testify, Exxon argued as follows:

> 99. Neither Dr. Shallis nor Dr. Laumbach evaluated, let alone opined on, the obvious and fundamental threshold question of whether exposure to gasoline is capable of causing ALM, nor did they opine Mobil's gasoline was a substantial cause of Mr. Gill's AML.
>
> 100. Instead, the reports submitted by Dr. Shallis and Dr. Laumbach demonstrate the methodology they employed was exclusively devoted to the analysis of benzene as a causative agent, and ultimately both reached a conclusion which is not disputed by Exxon, the relevant segments of the scientific and medical communities, and the relevant regulatory bodies: namely sufficient exposure to benzene can cause cancer in humans and elevate one's risk of developing AML.
>
> 101. What these witnesses failed to address, albeit by express report or testimony at trial, in any coherent, scientifically reliable manner is the operative question here: whether exposure to ***gasoline***, a product completely distinct from benzene, is capable of causing AML.
>
> 102. Both experts ignored analyzing the defendants' product and instead chose to completely conflate exposure to the defendants' products with exposure to benzene.
>
> 103. To permit Drs. Shallis and Laumbach to opine on benzene causing AML generally and then specifically causing Mr. Gill's AML, all the while ignoring the product for which Exxon is in court has been equally studied and not found to cause AML amounted to a fraud on the court and permitted the exact kind of untrustworthy, misleading science the ***Frye*** standard is in place to prevent.
>
> 104. Exxon submits it is entitled to a new trial on the merits in light of the ruling on the motion *in limine*.

Exxon's Motion for Post-Trial Relief at 19-20 (emphasis in original, footnote omitted); ***see also*** Exxon's Brief in Support of Post-Trial Relief at 61 (making the same argument that Dr. Shallis and Dr. Laumbach offered causation opinions on the wrong product).

As with its first issue, Exxon offers this Court new theories of error for the first time on appeal: *i.e.*, that the Gills' experts (1) used scientific methodologies in non-standard ways, (2) misapplied the Bradford Hill factors of causation to benzene generally and not gasoline specifically, (3) used an incorrect differential diagnosis, (4) failed to rule out idiopathic leukemia, and (5) failed to exclude other potential sources of Mr. Gill's benzene exposure. The only one of those claims that Exxon made in its post-trial motion for a new trial was that the experts erroneously applied the Bradford Hill factors to benzene generally, rather than gasoline specifically.

Additionally, Exxon argues that the trial court (1) improperly permitted the introduction of an undisclosed opinion, (2) allowed distortion of accepted methodology, and (3) erroneously relied on cross-examination as a remedy for its erroneous admission of the experts' testimony.

We dismiss the vast majority of Exxon's arguments as waived, because it did not assert them regarding the admission of the experts' testimony in its motion for a new trial. ***See*** Pa.R.A.P. 302(a); ***see also*** Pa.R.C.P. 227.1(b)(2); ***see also Trigg***, ***supra***.

We therefore address the only argument on admissibility of the expert witnesses that Exxon preserved for appellate review – namely, that the Gills'

experts misapplied the Bradford Hill factors of causation to benzene generally and not gasoline specifically. In that regard, Exxon's appellate argument is one-sentence long, before the brief moves onto all of the unpreserved arguments. Exxon's one-sentence argument is as follows: "[What] is clear vis-à-vis the Bradford Hill factors, as both experts deemed only one factor (temporality) critical in their expert reports and assessed only one factor based on benzene, not gasoline." Exxon's Brief at 37.

When reviewing a claim that a trial court improperly granted or denied a motion based on ***Frye v. United States***, 293 F. 1013 (D.C. Cir. 1923), to exclude expert testimony, "an abuse of discretion standard applies." ***Walsh Estate of Walsh v. BASF Corp.***, 234 A.3d 446, 456 (Pa. 2020). "An abuse of discretion is not merely an error of judgment, but rather a misapplication of the law or an unreasonable exercise of judgment." ***Johnson v. Johnson***, 222 A.3d 787, 789 (Pa. Super. 2019).

Exxon's one sentence regarding its only preserved argument is nothing more than Exxon's view of the experts' testimony and scientific analysis. Hence, that one sentence is insufficient to persuade this Court that the trial court abused its discretion when it denied Exxon's motion *in limine*.

Exxon cites to no precedent or Rule in support of its assertion that the experts had to analyze the evidence in the manner Exxon desired, and this Court is aware of none. Further, it does not claim that the trial court abused its discretion by allowing the experts to testify, simply because, in Exxon's opinion, the experts misapplied the Bradford Hill factors. In fact, Exxon's

argument on this issue does not even explain what the Bradford Hill factors are or cite any case where a Pennsylvania court has dictated the manner in which an expert witness is supposed to employ those factors in his or her research.

Thus, on the sole preserved argument for this issue, Exxon fails to show that the trial court abused its discretion. Accordingly, we dismiss this issue as warranting no appellate relief.

C. The Trial Court's Discretion Regarding Jury Verdict

Third, Exxon contends that the jury's award of $725,000,000 to Mr. Gill in compensatory damages "goes far beyond the limits of fair and reasonable compensation. The trial court's decision upholding the award cannot stand." Exxon's Brief at 40. According to Exxon, Mr. Gill's leukemia, remission status, and largely functional lifestyle are typical injuries for cancer patients that do not justify what Exxon views as an atypically large award. It alleges the trial court erroneously treated AML as an objective, permanent injury to Mr. Gill, despite the remission testimony of Exxon's medical expert, and by finding that Mr. Gill lost the ability to work, when he had already retired and presented no evidence of economic damages. According to Exxon, the absence of economic harm should weigh against — rather than support — the jury's non-economic, pain-and-suffering award. It points to Mr. Gill's pretrial settlements with other defendants and jurisdictional demand in his complaint to convince us that the jury's verdict was excessive.

Exxon also asserts that each component of the damages award is arbitrary and punitive. It asserts that $435,000,000 for pain and suffering is unsupported, because Mr. Gill's treatment symptoms, though real, are common in cancer care. Likewise, the $273,750,000 for loss of enjoyment of life is said to be unjustified, because Mr. Gill can travel, socialize, and pursue by avoiding people who are sick with infectious diseases. Furthermore, Exxon suggests that the $18,500,000 awards for disfigurement and embarrassment, respectively, lack evidentiary support, given only minor, largely unseen surgical scars and a brief hospital-related embarrassment.

Such argument fails to appreciate our deferential standard of review for a trial court's decision not to award a new trial or remittitur based on a contention that a verdict is excessive. Exxon asks us to review Mr. Gill's award of compensatory damages *de novo*. Its argument invites us – not only to substitute our judgment as to what is excessive and conscious shocking for the judgment of the trial court – but also to substitute our view of the factual question of damages for that of jury. As a reviewing Court, we may do neither.

The grant of a new jury trial and the awarding of remittitur is a matter left within the discretion of the trial court. ***See, e.g.***, ***Martin v. Evans***, 711 A.2d 458, 461 (Pa. 1998). "A new trial will be granted on the grounds that the verdict is against the weight of the evidence where the verdict is so contrary to the evidence it shocks one's sense of justice." ***Cangemi ex rel. Estate of Cangemi v. Cone***, 774 A.2d 1262, 1265 (Pa. Super. 2001). "An appellant is ***not*** entitled to a new trial where the evidence is conflicting and

the finder of fact could have decided either way." ***Id.*** (emphasis added). Our standard of review of an order denying a motion for a new trial is to decide whether the trial court committed an error of law that controlled the outcome of the case or committed an abuse of discretion. ***See id.***

Critically, the "determination of damages is a factual question to be decided by the fact-finder. The fact-finder must assess the testimony, by weighing the evidence and determining its credibility . . . ." ***Boehm v. Riversource Life Ins. Co.***, 117 A.3d 308, 328 (Pa. Super. 2015).

Because damages are a factual question, the common law has always committed the correction of any allegedly excessive verdict to the judge who tried the jury case. "The authority of ***the common pleas*** in the control and revision of excessive verdicts through the means of new trials was firmly settled in England before the foundation of this colony . . . ." ***Smith v. Times Pub. Co.***, 36 A. 296, 298 (Pa. 1897) (emphasis added); ***see Beardmore v. Carrington***, 2 Wils. 244, 95 Eng. Rep. 790, 793 (K.B. 1764).

Accordingly, the decision "to grant a new trial because of excessiveness or inadequacy of the verdict is a matter within the sound and peculiar discretion of the trial court, which has observed the demeanor of the witnesses, and its decision will be sustained by an appellate court in the absence of a clear or gross abuse of discretion or error of law which controlled the verdict or the outcome of the case." ***Botek v. Mine Safety Appliance Corp.***, 611 A.2d 1174, 1176 (Pa. 1992).

Thus, when reviewing the denial of a new jury trial and remittitur based on a claim that the verdict was excessive, "the Superior Court [is] not free to ***substitute*** [its] judgment for that of the trial court . . . ." ***Id.*** (emphasis in original). In other words, this Court may not ask itself whether the jury's award of $725,000,000 in compensation to Mr. Gill was correct or excessive. Nor may we decide *de novo* whether the verdict shocks our judicial consciences. To do so would be "an erroneous usurpation of the primary function of the jury and the trial court." ***Id.*** at 1177.

The only thing we may decide is whether the trial court "acted within its discretion under these circumstances by determining that the verdict did not shock ***its*** conscience." ***Hammons v. Ethicon, Inc.***, 190 A.3d 1248, 1287 (Pa. Super. 2018), *aff'd*, 240 A.3d 537 (Pa. 2020).

The Supreme Court of Pennsylvania has clearly defined the abuse-of-discretion standard of review. "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied; or the judgment exercised is manifestly unreasonable; or [the judgment is] the result of partiality, prejudice, bias or ill-will . . . discretion is abused." ***Paden v. Baker Concrete Construction Co., Inc.***, 658 A.2d 341, 343 (Pa. 1995). "We emphasize that an abuse of discretion may not be found merely because the appellate court might have reached a different conclusion but requires a showing of manifest unreasonableness; or partiality, prejudice, bias, or ill-will; or such lack of support as to be clearly erroneous." ***Id.***

At the outset of its brief, Exxon acknowledges that "this Court reviews the trial court's rulings on . . . excessiveness of the verdict . . . for abuse of discretion." ***Id.*** at 2. Yet Exxon completely omits the above definition of abuse of discretion from its appellate brief. In fact, Exxon does not even use the phrase "abuse of discretion" in its argument regarding the trial court's denial of its motions for a new jury trial and remittitur. ***See*** Exxon's Brief at 39-46.

As a result, Exxon makes no contention that the trial court's decision to refuse a new jury trial and a remittitur was manifestly unreasonable or the result of partiality, prejudice, bias or ill-will. Furthermore, Exxon makes no claim that the trial court overrode or misapplied the law when deciding that the verdict did not shock its conscience. Nor could the trial court have, because the "determination of damages is a factual question . . . ." ***Boehm v. Riversource Life Ins. Co.***, 117 A.3d 308, 328 (Pa. Super. 2015). Thus, the trial court's shock at a verdict (or lack thereof) is rooted in the court's factual findings, after searching its conscience, in consideration of the testimony it observed and the credibility determinations it made at trial. When deciding a pure question of fact, the trial court does not apply or override the law.

Instead of arguing abuse of discretion, Exxon argues *de novo* that, in its view, the jury's verdict was excessive and beyond the uncertain limits of what Exxon considers to be reasonable compensation for Mr. Gill's injuries. By doing so, Exxon effectively asks us to substitute our view of the facts and to

reweigh the evidence for the jury. However, as mentioned, this Court is not free to substitute its judgment for that of the fact finder; we must review the record "in light of the evidence accepted by the jury." ***Smalls v. Pittsburgh–Corning Corp.***, 843 A.2d 410, 414 (Pa. Super. 2004) (citation and quotation omitted). And, of course, the "jury is always free to believe all, part, some, or none of the evidence presented." ***Majczyk v. Oesch***, 789 A.2d 717, 725–26 (Pa. Super. 2001).

Exxon also asks us to substitute our view of what verdict amount is shocking to our consciences for that of the trial court, rather than deferring to the trial court, who heard and saw the witnesses testify. Hence, Exxon asks us to overstep our role as a reviewing court and invade the provinces of both the jury and the trial court. This ***not*** the function of an appellate court. ***See Botek***, ***supra***.

In short, Exxon does not argue – much less convince us – that the trial court committed an abuse of discretion by denying its motions for a new trial and remittitur, based on Exxon's belief that the jury awarded Mr. Gill excessive damages. We therefore dismiss its third issue as warranting no appellate relief.

D. Due Process & Compensatory Damages

Next, Exxon asserts a constitutional challenge to the power of Pennsylvania's judiciary to enter a judgment based on the damages that the jury awarded to Mr. Gill. It believes the $725,500,000 award of compensatory damages is unconstitutional, because the jury imposed punitive damages,

under the guise of compensatory damages. Exxon believes the verdict violates the Due Process Clause of Fourteenth Amendment to the Constitution of the United States.

Exxon points to no evidence to support its suspicion that the jury ignored the trial court's instructions to award compensatory damages, rather than punitive damages. Indeed, the trial court granted summary judgment to Exxon on punitive damages, so the trial court did not instruct the jury on punitive damages and that issue never went before the jury. In fact, Exxon admits that "the jury in this case did not incant the words 'punitive damages' *in haec verba* on the verdict sheet, and 'the jury was not ever instructed regarding punitive damages.'" Exxon's Brief at 47 (quoting Trial Court's Opinion, 5/8/25, at 355). Accordingly, there is no proof that the jury truly imposed punitive damages on Exxon, as it suspects.

Nevertheless, Exxon asks us to extend the due-process protections for excessive-punitive-damages verdicts that the Supreme Court of the United States announced in ***State Farm Mutual Auto. Ins. Co. v. Campbell***, 538 U.S. 408 (2003), to compensatory damages that a defendant believes a jury punitively imposed against it. Exxon cites no case where any court has applied the Due Process Clause of the Fourteenth Amendment to declare a compensatory-damages award unconstitutional. It offers only a footnote, where the Supreme Court of Michigan, in *dictum* and with no analysis, said, "A grossly excessive award for pain and suffering ***may*** violate the Due Process Clause even if it is not labeled 'punitive.'" ***Gilbert v. DaimlerChrysler Corp.***,

685 N.W.2d 391, 400 n.22 (Mich. 2004) (emphasis added). The court then added, "In this case, however, there is no need to reach this constitutional question, given the necessity of reversal on other [state-law] grounds." ***Id.***

Exxon then goes on to explain why, in its mind, all of the procedural due process "concerns animating the Supreme Court's punitive-damages jurisprudence are implicated by massive awards for intangible harms – as this case vividly illustrates." Exxon's Brief at 48. Analyzing the punitive-damages guideposts found in ***State Farm***, ***supra***, Exxon asserts that the verdict is disproportionate and unsupported by any reprehensible conduct on its part. In Exxon's view, true compensatory damages would have been closer to $500,000 (as suggested by the Gills' settlement with Root Oil, a former defendant in this case). Thus, Exxon argues that the rest of the compensatory award above $500,000 creates an extreme punitive-to-compensatory ratio of 1,450:1. It contends this ratio far exceeds the constitutional limits for punitive damages under the Due Process Clause. Lastly, Exxon contends that its conduct (selling gasoline with warnings not to use the gasoline for anything other than as fuel) was lawful and not reprehensible, and that there are no comparable criminal penalties for that activity. Accordingly, it asserts that the verdict is a constitutionally excessive, punitive-damage award, masquerading as a compensatory award.

Exxon's novel theory that "a due process violation has occurred raises a question of law for which this Court's standard of review is *de novo*, and [our] scope of review is plenary." ***Pascal v. City of Pittsburgh Zoning Board of***

Adjustment, 259 A.3d 375, 382 (Pa. 2021). The Fourteenth Amendment provides, in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amnd. XIV, § 1.

According to the Supreme Court of the United States, "compensatory damages . . . are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." ***Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.***, 532 U.S. 424, 432, (2001) (citing RESTATEMENT (SECOND) OF TORTS § 903, at 453–454 (1979)). By contrast, punitive damages "operate as 'private fines' intended to punish the defendant and to deter future wrongdoing." ***Id.*** "A jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation." ***Id.***

Punitive damages are subject to the restrictions of the Due Process Clause, because the "Due Process Clause of its own force also prohibits the States from imposing grossly excessive ***punishments*** on tortfeasors." ***Id.*** at 434 (emphasis added). In cases where the High Court has intervened to prevent excessive punitive damages, "the constitutional violations were predicated on judicial determinations that the punishments were grossly disproportional to the gravity of defendants' offenses." ***Id.*** However, nothing in the precedents of the Supreme Court of the United States suggests that the Due Process Clause concerns itself with allegedly excessive compensation to

plaintiffs for noneconomic harm. Rather, it is the penal nature of punitive damages that implicates due-process protection.

In fact, the punitive guideposts, upon which Exxon relies, do not apply to compensatory damages. In ***BMW of North America, Inc. v. Gore***, 517 U.S. 559, 574 (1996), the Supreme Court held that, "notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." The ***Gore*** Court then established "three 'guideposts' for determining whether a [punitive-damages] award is grossly excessive: (1) the degree of reprehensibility of defendant's conduct, (2) the relationship of the punitive verdict to the harm or potential harm suffered by the victim, and (3) any sanctions for comparable misconduct in statutory or decisional law." ***Bert Co. v. Turk***, 257 A.3d 93, 121 (Pa. Super. 2021), *aff'd*, 298 A.3d 44 (Pa. 2023) (citing ***Gore***, 517 U.S. at 574-85) (some punctuation omitted).

First, the degree of moral condemnation (or lack thereof) surrounding the defendant's conduct is irrelevant to a compensatory damages award. Neither the jury nor the reviewing court takes the reprehensibility (or lack thereof) of the defendant's conduct into account. In fact, as this case demonstrates, the award of compensatory damages follows where, as here, the defendant is strictly liable under a product-defect theory but clearly had no intention of harming Mr. Gill.

In other words, "Strict liability . . . imposes liability without fault" being attributed to the defendant. ***Sullivan v. Werner Co.***, 306 A.3d 846, 863 (Pa. 2023). "It reflects the social and economic policy of this Commonwealth, which is that those who sell a product (*i.e.*, profit from making and putting a product in the stream of commerce) are held responsible for damage caused to a consumer by the reasonable use of the product. The risk of injury is placed, therefore, upon the supplier of the products." ***Id.*** (some punctuation omitted) (quoting ***Tincher v. Omega Flex, Inc.***, 104 A.3d 328, 382 (Pa. 2014)). "The focus in a design-defect case must remain on the product and ***not on the manufacturer's conduct***." ***Id.*** (emphasis added). Thus, any focus upon the lack of reprehensibility of Exxon's conduct when reviewing the jury's award of compensatory damages would wrongfully conflate the concept of punitive damages, which seek to punish the defendant, and the no-fault, product-defect law, which seeks to place the risk of harm to Mr. Gill on Exxon.

Moreover, even where a defendant has acted intentionally or negligently to harm a plaintiff, the award of compensatory damages does not take the degree of reprehensibility of the defendant's conduct into account. Instead, the purpose of compensatory damages is "to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." ***Cooper Indus.***, 532 U.S. at 432. In making its compensatory award, our trial courts do not instruct juries to take the reprehensibility of a defendant's conduct into consideration.

Instead, our trial courts must instruct them as follows:

There are four items that make up a damage award for noneconomic loss, both past and future: (1) pain and suffering; (2) embarrassment and humiliation; (3) loss of ability to enjoy the pleasures of life; and (4) disfigurement.

The first item to be considered in the plaintiff's claims for damage awards for past noneconomic loss and for future noneconomic loss is pain and suffering. You are instructed that plaintiff is entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress that you find (he) (she) has endured from the time of the injury until today and that plaintiff is also entitled to be fairly and adequately compensated for all physical pain, mental anguish, discomfort, inconvenience, and distress you find (he) (she) will endure in the future as a result of (his) (her) injuries.

The second item that goes to make up noneconomic loss is embarrassment and humiliation. Plaintiff is entitled to be fairly and adequately compensated for such embarrassment and humiliation as you believe (he) (she) has endured and will continue to endure in the future as a result of (his) (her) injuries.

The third item is loss of enjoyment of life. Plaintiff is entitled to be fairly and adequately compensated for the loss of (his) (her) ability to enjoy any of the pleasures of life as a result of the injuries from the time of the injuries until today and to be fairly and adequately compensated for the loss of (his) (her) ability to enjoy any of the pleasures of life in the future as a result of (his) (her) injuries.

The fourth and final item is disfigurement. The disfigurement that plaintiff has sustained is a separate item of damages recognized by the law. Therefore, in addition to any sums you award for pain and suffering, for embarrassment and humiliation, and for loss of enjoyment of life, the plaintiff is entitled to be fairly and adequately compensated for the disfigurement (he) (she) has suffered from the time of the injury to the present and that (he) (she) will continue to suffer during the future duration of (his) (her) life.

In considering plaintiff's claims for damage awards for past and future noneconomic loss, you will consider the following factors: (1) the age of the plaintiff; (2) the

> severity of the injuries; (3) whether the injuries are temporary or permanent; (4) the extent to which the injuries affect the ability of the plaintiff to perform basic activities of daily living and other activities in which the plaintiff previously engaged; (5) the duration and nature of medical treatment; (6) the duration and extent of the physical pain and mental anguish which the plaintiff has experienced in the past and will experience in the future; (7) the health and physical condition of the plaintiff prior to the injuries; and (8) in case of disfigurement, the nature of the disfigurement and the consequences for the plaintiff.

Pa.R.C.P. 223.3. Absent from this charge is any mention of the degree of moral reprehensibility (or lack thereof) of a defendant's conduct. Therefore, it would be illogical for a reviewing court to consider the degree of reprehensibility of a defendant's conduct when trying to determine whether the Due Process Clause bars a jury's compensatory-damages award.

Turning to the second ***Gore*** guidepost – *i.e.*, the relationship between the punitive verdict and the harm or potential harm that the plaintiff suffered – we find it equally inapplicable to a compensatory award. Under this guidepost, courts examine the ratio of punitive damages to compensatory damages, where punitive damages serve as the numerator and compensatory damages serve as the denominator. ***See Bert Co.***, ***supra***. Obviously, this ratio does not work with the compensatory-damages award, because there is no other award by the jury to serve as the denominator, if we use the compensatory damages as the numerator. And using the compensatory-damages award as both numerator and denominator would produce a one-to-one ratio.

Moreover, Exxon's use of the settlement figure of $500,000 that the Gills entered with Root Oil, another defendant in this case, has no bases in law. It picked that number out of self-interest to create a disproportionate ratio between the compensatory-damages award and the settlement number. The settlement that the Gills reached with Root Oil can be based on many factors that do not pertain to its case against Exxon, such as the strength (or lack thereof) of evidence against Root Oil and the time of Mr. Gills' exposure to Root Oil's products. The Gills may have also accepted $500,000 to settle with Root Oil for the simple reason that they did not view Root Oil as responsible for Mr. Gill's injuries as they viewed Exxon. Or, perhaps, they simply viewed the offer from Root Oil as a fair exchange of risk versus reward.

We have no idea why Root Oil and the Gills reached the settlement they reached. Nor do we know if Exxon ever made a settlement offer. Whatever Root Oil's reasons were for settling, we cannot accept that random number as a constitutionally mandated denominator to compare the compensatory damages that the jury awarded for the injuries Exxon caused Mr. Gill. It is not an apples-to-apples comparison, nor does it represent a judicial finding of fact or any admission by the Gills as to their measure of damages.

Therefore, we hold that the second ***Gore*** guidepost may not be intelligently applied to a jury's award of solely compensatory damages.

Finally, the third ***Gore*** guidepost is also inapplicable to compensatory damages. That guidepost directs courts to compare any sanctions for the defendant's misconduct in statutory or decisional law. This guidepost is rooted

in the fact that punitive damages are an exercise of the State's penal powers against tortfeasors. By making the comparison to statutory and decisional law, a court can ascertain whether the defendant had fair notice of the degree of punishment to which its tortious conduct would subject it.

Again, the logic of ***Gore***'s guidepost does not extend to compensatory damages, because the purpose of compensatory damages is not to punish the defendant. Instead, the measure of damages is the amount of harm (past, present, and future) that the defendant inflicted upon the plaintiff. There would not be any comparable statutory or decisional law that would be able to notify the defendant of the amount of harm it could inflict on any particular plaintiff, because each plaintiff brings his or her own life circumstances to the case. Therefore, the common law has long held that, when it comes to making reparations to a tort victim through compensatory damages, "a tortfeasor must take its victim as it finds him." ***Botek***, 611 A.2d 1174, 1177 (Pa. 1992).

The Due Process Clause does not compel us to look through statutes or other cases to determine whether Exxon had reasonable notice of the amount of compensatory damages it would have to pay the Gills upon infecting Mr. Gill with leukemia. We fail to see the utility of such research. How could any statutory law or precedent predict or reflect the degree of pain and suffering and loss of consortium that Exxon caused to the Gills? Indeed, this is why, since the *Magna Carta*, the common law has always entrusted the awarding of compensatory damages to the collective, communal wisdom of a jury.

Therefore, we reject Exxon's novel claim that the Due Process Clause of the Fourteenth Amendment converts the jury's compensatory-damages award into an excessively punitive one. We dismiss its fourth appellate issue as meritless.

E. Juror No. 2's Alleged Online Posts

For its final claim of error, Exxon argues that the trial court abused its discretion by refusing to consider post-verdict evidence, which allegedly shows bias and misconduct by Juror No. 2. According to Exxon, this after-discovered evidence independently warrants a new trial or, at least, an evidentiary hearing before the trial court.

First, Exxon asserts that certain online comments, purportedly from Juror No. 2, reveal undisclosed bias against Exxon that should have led to the juror's removal during voir dire. Despite assuring the court he could be impartial, the juror later allegedly described Exxon as "objectively a villain" and celebrated the opportunity to "stick it to the man." According to Exxon, these statements demonstrate dishonesty during *voir dire* under the standard set forth in ***McDonough Power Equipment, Inc. v. Greenwood***, 464 U.S. 548 (1984), because truthful answers would have supported a for-cause or peremptory strike. ***See*** Exxon's Brief at 52. The juror's statements also allegedly showed hostility and joy in punishing Exxon, further undermining the fairness of the verdict.

In addition, Exxon contends the comments reveal the jury was exposed to "prejudicial information not of record," specifically confidential settlement

discussions indicating that Exxon rejected a $1,200,000 offer. ***Id.*** at 53. It claims such information, barred by evidentiary rules, could improperly influence perceptions of liability and damages and inflame the jury against the defendant. Applying the objective-prejudice test described in ***Pratt v. St. Christopher's Hospital***, 866 A.2d 313 (Pa. 2005), Exxon argues that the extraneous information related to central issues, was not otherwise available at trial, and was inflammatory, thereby creating extreme prejudice.

It further maintains that additional factors reinforce the need for a retrial: (1) the possibility that plaintiff's counsel skirted evidentiary rulings by introducing prejudicial themes (e.g., corporate revenues and climate change responsibility); (2) the relatively weak evidence supporting the large damages award; and (3) unresolved factual questions — such as how many jurors learned of the settlement and how extensively it was discussed — that required an evidentiary hearing.

Exxon also challenges the trial court's reasons for rejecting the evidence. It claims Juror No. 2's alleged statements were not hearsay, because they were offered to show bias, not for their truth, and were sufficiently authenticated or at least warranted a hearing to test authenticity. ***See id.*** at 57. It further contends the no-impeachment rule does not apply, because the evidence concerns preexisting bias and exposure to outside information, both recognized exceptions. Finally, Exxon disputes the trial court's timeliness ruling. ***See id.*** at 59-60. It believes it promptly notified the trial court after discovering the posts and moved within days to

supplement its pending post-trial motions, consistent with precedent allowing *nunc pro tunc* supplementation when juror misconduct is discovered post-trial.

The learned Judge Carmella Jacquinto, writing for the Court of Common Pleas of Philadelphia County, explained her decision to dismiss Exxon's motion to supplement post-trial motions *nunc pro tunc* as untimely. She opined as follows:

> As to [Exxon's] final issue on appeal, the Pennsylvania Rules of Civil Procedure read as follows, "Post-trial motions shall be filed within ten days after verdict . . . in the case of a jury trial." Pa.R.C.P. 227.1(c)(1). If a party files a post-trial motion outside of the time period detailed by Pa.R.C.P. 227.1(c)(1), but the trial court still has jurisdiction, the trial court may consider the motion. ***See Mammoccio v. 1818 Market Partnership***, 734 A.2d 23 (Pa. Super. 1999). Furthermore, in the event a trial court does not consider the motion, those issues are waived and not preserved for appeal. ***See Kennel v. Thomas***, 804 A.2d 667 (Pa. Super. 2002).
>
> Additionally, the Superior Court has stated,
>
> > The decision to allow the filing of a post-trial motion *nunc pro tunc* is vested in the discretion of the trial court. We will not reverse unless the trial court abused its discretion.
>
> * * *
>
> ***Lenhart v. Cigna Companies***, 824 A.2d 1193, 1195-96 (Pa. Super. 2003).
>
> Here, the docket reflects the jury rendered its verdict on May 9, 2024. Under Pa.R.C.P. 227.1(c)(1), [Exxon] had until May 20, 2024 to file a post-trial motion. Exxon did in fact file a timely post-trial motion on May 17, 2024 raising multiple issues, such as JNOV, various issues pertaining to a request for a new trial, and remittitur. Then, on August 21, 2024, [Exxon] filed a Motion to Supplement its Post-Trial Motion. In its *nunc pro tunc* motion, [Exxon] aimed to

> supplement its issues raised in its post-trial motion related to its request for a new trial and remittitur due to purported online chat room posts from an alleged juror made shortly after the trial concluded. The nature of the chat room posts [is] reactionary, with the statements occurring after the verdict, never suggesting anything improper during the trial or during deliberations. The trial court denied [Exxon's] *nunc pro tunc* motion seeking to supplement its post-trial motion. Thus, such a decision is not an abuse of discretion nor error, but consistent with Pa.R.C.P. 227.1(c)(1) and the discretion the trial court has per ***Mammoccio*** and ***Kennel***.

Trial Court Opinion, 5/8/25, at 356-59.

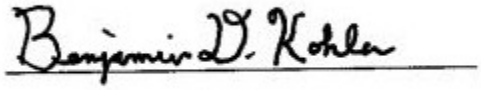
We discern no abuse of discretion when a trial court dismisses a motion to supplement a defendant's post-trial motions *nunc pro tunc*, where, as here, that motion to supplement is filed over three months late, and does not suggest anything improper during trial or jury deliberations. Under Rule 227.1(c)(1), Exxon's motion to supplement was facially untimely, and the trial court had discretion to dismiss it as such.

Because the trial court did not grant *nunc pro tunc* relief, the issue is waived on appeal. ***See Kennel and Lenhart***, ***supra***. Exxon's final appellate issue dismissed as waived.

Judgment affirmed.

Judge Nichols joins. Judge Sullivan files a Concurring/Dissenting Statement.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/15/2026