

11-0469

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**BOBBY J. MESSER and his wife  
AMANDA MESSER,**

**PLAINTIFFS,**

**and**

**CIVIL ACTION NO: 06-C-182**

**HAMPDEN COAL COMPANY.  
LLC, a West Virginia Limited  
Liability Company,**

**DEFENDANT.**

**ORDER DENYING AMENDED MOTION FOR NEW TRIAL**

On the 26<sup>th</sup> day of April, 2010, came the plaintiffs by Samuel A. Hrko, Esq., and Victor S. Woods, Esq., their attorneys and came the defendant, by Rami M. Awadalla, Esq., its attorney for a hearing on the plaintiffs' Motion and Amended Motion For New Trial. After reviewing the oral argument of counsel, plaintiffs' motions, defendant's response, and the file in this matter, the Court **DENIES** Plaintiffs' Motion and Amended Motion for a New Trial.

Trial in this matter began on September 9, 2009, and ended with the jury's verdict finding the defendant, Hampden Coal Company, LLC, not negligent. Plaintiffs filed a timely Motion For New Trial and then filed an Amended Motion For New Trial. In the initial Motion For New Trial Plaintiffs' allege that juror Robert Helmandollar expressed the view that based upon his training and experience as an electrical engineer, any person who is injured by electricity must be at fault for causing such accident. However, a review of the trial transcript that plaintiffs' allegation was not supported by the transcript. The reason plaintiffs' moved to strike Mr. Helmandollar as a juror was because of his education, training and experience in electricity. A review of the transcript shows that Mr. Helmandollar has a bachelor of science in electrical engineering technology.

In plaintiffs' Amended Motion For New Trial plaintiff's allege that Juror Helmandollar's expertise in electircity was such that he was biased against the plaintiff. Plaintiffs used a peremptory strike to remove Mr. Helmandollar from the jury. However, the transcript shows that the only reason that plaintiffs' moved to remove Mr. Helmandollar was because of his education, training and experience. If this were true, there would never be coal miners sitting as jurors in deliberate intent cases relating to mining injuries. Mr. Helmandollar was never declared by the court to be an expert.

The true test to be applied with regard to the qualifications of a juror is whether a juror can, without bias or prejudice, return a verdict on the evidence and the court's instructions and disregard any prior opinions he may have had. Syllabus Point 1, State v. Harshbarger, 170 W. Va. 401, 294 S.E.2d 254 (1982), quoting State v. Charolot, 157 W.Va. 994, 206 S.E.2d 908 (1974).

Without any hesitation or qualification Mr. Helmandollar said that he could serve on the jury without any bias or prejudice. The request to remove Mr. Helmandollar was not because of bias nor prejudice.

For the reasons set forth herein plaintiffs' Motion For New Trial and Amended Motion For New Trial are **DENIED**.

Plaintiffs object and except to the ruling of the Court.

The Clerk is directed to send an attested copy of this Order to:

Samuel A. Hrko, Esq.  
Segal Law Firm  
810 Kanawha Boulevard, East  
Charleston, WV 25301

Rami M. Awadallah, Esq.  
Mannion & Gray  
122 Capitol Street, Suite 100  
Charleston, WV 25301

DATED this 22<sup>nd</sup> day of September, 2010.

Rudolph J. Muremchuk  
JUDGE

ATTEST.  
CLERK  
29 Sept 2010  
By: S. McNeil  
Deputy.