

12-0968

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

BRIAN TIMMONS, Individually and as
Administrator of the Estate of Lewis C.
Timmons,

Plaintiff,

vs.

CIVIL ACTION NO. 08-C-102H

Chief Judge David W. Hummel, Jr.

OHIO POWER COMPANY and
AMERICAN ELECTRIC POWER
SERVICE CORPORATION

Defendants,

ORDER OF COURT

This matter came on for argument on Defendants' Post-Trial Motions on October 6, 2011. Plaintiff, Brian Timmons, was present by counsel, Geoffrey Brown, Christopher Regan and Rodney Windom. Defendants, Ohio Power Company and American Electric Service Corporation were present by counsel Albert Sebok and Michael Leahey.

The Court was advised by counsel that the parties had fully briefed the issues raised through Defendants' Motion to Mould the Verdict to Comply with Ohio Rev. Code § 2315.21(D)(2)(A), Defendants' Rule 50(a) Motion Regarding the Cause of Death of Lewis Timmons and Defendants' Motion to Apply the Proceeds of Plaintiff's Settlement with CGI/General Hydrogen to the Jury Verdict.

After a review of the written Motions and Briefs, the argument of counsel and mature consideration of these issues the Court made the following rulings:

1. It is ORDERED that Defendants Rule 50(a) Motion Regarding the Cause of Death of Lewis Timmons is hereby DENIED.

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DAVID W. HUMMEL, JR.

2. It is further ORDERED that Defendants' Motion to Apply the Proceeds of Plaintiff's Settlement with CGI/General Hydrogen to the Jury Verdict is DENIED. This Court finds that Ohio law must be applied to this issue. Based upon the jury's finding that CGI/General Hydrogen was not negligent Defendants are not entitled to setoff the jury's award of compensatory damages against the proceeds of Plaintiff's settlement with CGI/General Hydrogen under Ohio law as set forth in the Fidelholtz case.

3. It is further ORDERED, that Defendants' Motion to Mould the Verdict to Comply with Ohio Rev. Code § 2315.21(D)(2)(A) is GRANTED. As a preliminary matter, this Court finds that Ohio law must be applied to resolve this damages issue. The Court further finds that Plaintiff's argument that Ohio law violates West Virginia's public policy is not supported by existing case law.

Pursuant to Ohio Rev. Code § 2315.21(D)(2)(A) this Court recognizes that punitive damages may only be awarded pursuant to Plaintiff's survivorship cause of action. Furthermore, any award of punitive damages is capped at two times the award of compensatory damages. In this matter, Plaintiff was awarded a total of \$275.00 in compensatory damages (\$165.00 against AEPSC and \$110.00 against Ohio Power). As such, Pursuant to 2315.21(D)(2)(A) this Court hereby molds the jury's award of punitive damages and reduces this award to \$550.00 (\$330.00 against AEPSC and \$220.00 against Ohio Power).

4. It is ORDERED that all objections and exceptions to this Order are noted and preserved.

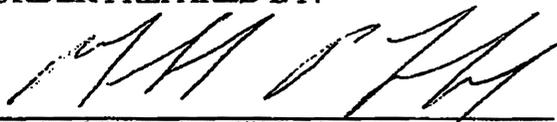
5. It is ORDERED that an attested copy of this Order shall be sent to all counsel of record.

Entered this 17th day of October, 2011.



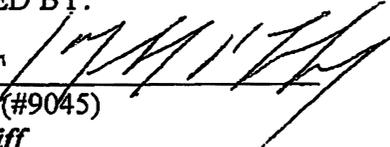
David W. Hummel, Jr., Judge

ORDER PREPARED BY:



Michael P. Leahey (#9934)
*Attorney for Defendants, Ohio Power
Company and American Electric Power
Service Corporation*

ORDER APPROVED BY:

by permission 
Geoffrey C. Brown (#9045)
Attorney for Plaintiff

A Copy Teste:

David R. Ealy, Clerk

By  Deputy

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

BRIAN TIMMONS, Administrator
of the Estate of Lewis C. Timmons,

Plaintiff,

v.

CIVIL ACTION NO. 08-C-102
Judge David W. Hummel, Jr.

OHIO POWER COMPANY and
AMERICAN ELECTRIC POWER
SERVICE CORPORATION

Defendants.

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DAVID W. HUMMEL, JR.

PARTIAL JUDGMENT ORDER

In view of the rulings of this Court set forth in its order dated October 17, 2011, it is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have JUDGMENT against the Defendant as follows:

\$1,998,940.00 in compensatory damages, as determined by the jury, and \$550.00 in punitive damages after reducing the jury's award of \$5,000,000.00, in accordance with this court's determinations regarding Ohio's "cap" on punitive damages, for a total judgment of \$1,999,490.00. The judgment shall bear interest at the judgment rate from the date of the verdict *nunc pro tunc*. The interest shall run at 7% per annum, or \$383.46 per day, until the same has been satisfied.*

The issue of the amount of attorney's fees to be awarded to Plaintiff as well as the availability of prejudgment interest to the Plaintiff are reserved for later decision by the Court and therefore this is a partial judgment only. Any motions in relation to the amounts reflected in this Partial Judgment shall be filed not later than 10 days from the entry of this order.

To all of the foregoing, each side's objections and exceptions are noted and preserved.

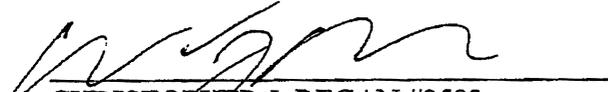
ALL OF THE ABOVE IS SO ORDERED.

Entered this 23 day of November, 2011,



DAVID W. HUMMEL, JR.
CHIEF JUDGE

Prepared by:



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Co-Counsel for Plaintiff

A Clerk of Court

David R. Ealy, Clerk

By Donna Crow Deputy

* The Court finds that Post-Judgment interest determination is a procedural issue and not substantive; West Virginia Law Applies.


11-23-11

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

**BRIAN TIMMONS, Administrator
of the Estate of Lewis C. Timmons,**

Plaintiff,

VS.

// CIVIL ACTION NO. 08-C-102 H

**OHIO POWER COMPANY and
AMERICAN ELECTRIC POWER
POWER SERVICE CORPORATION,**

Defendants.

ORDER

Pending before the Court is *Plaintiff's Motion for a New Trial* relative to the above-styled civil action. The issues attendant to same said motion have been fully briefed by all parties.

On Wednesday, July 11, 2012, a hearing took place at which time all parties were provided with ample time and opportunity to both present evidence and oral argument in support of their respective positions. At the conclusion of the hearing, the Court announced from the bench that it would take the motion under consideration.

Plaintiff's motion sets forth six (6) distinct bases upon which relief is sought; to-wit:

1. A new trial on damages is required in this case pursuant to *Freshwater v. Booth*, 160 W.Va. 156, 233 S.E.2d 312 (1977);
2. The Plaintiff is entitled to a new trial because of the Court's error in refusing preclusive effect to the decision in *McLaughlin v. Ohio Power Company* [a companion civil action] and the OSHA violations;
3. The Plaintiff is entitled to a new trial because of the Court's error in excluding the OSHA violations;
4. The Plaintiff is entitled to a new trial on the amount of punitive damages because the Court erred in applying Ohio's standard for punitive damages;

5. The Plaintiff is entitled to a new trial on punitive damages because the trial Court's error in admitting evidence during the punitive phase that was unreliable and prejudicial; and
6. The Plaintiff is entitled to relief from the judgment of the Court granting the Defendant's motion to apply Ohio's punitive cap to the verdict for the reasons stated in Plaintiff's prior extensive briefing on this subject.

Without a doubt, the issues raised in bases 2 through 6, inclusive, have been briefed, argued, and decided in the context of the instant litigation more extensively than may be reasonably expressed herein. Plaintiff's motion and supporting arguments which are the subject of this decision and order do nothing to cause the Court to alter or amend its' prior determinations.

As to Plaintiff's first basis for a new trial, the Jury in the instant civil action worked its way through thirty-five (35) line items of compensatory damages. The Jury awarded financial damages to each and every child (3 adults) and grandchild (4 minors) of the decedent. The Jury did not award financial damages to any of the decedent's siblings (3 adults). Plaintiff's motion and argument on this basis is not persuasive such that justice would require a retrial. On this point, the Court adopts with little, if any, exception the arguments and analysis presented by the defendants herein.

Based upon the foregoing, it is the ORDER of this Court that *Plaintiff's Motion for a New Trial* is DENIED.

It is all so ORDERED.

The Clerk shall transmit a copy of this Order to all counsel of record.

Entered: July 12, 2012.



DAVID W. HIMMEL, JR.
Chief Judge