2016 WL 3802961 (N.Y.Sup.) (Trial Order)
Supreme Court, New York.
New York County

In Re: NEW YORK CITY ASBESTOS LITIGATION.
Walter MILLER, Plaintiff,
v.
BMW OF NORTH AMERICA, et al., Defendants.

No. 190087/2014.
May 4, 2016.

Amended Decision/Order

Cynthia S. Kern, Judge.

***1 HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion for: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	—

The Decision/Order of this court dated April 25, 2016 is hereby amended as follows:

Plaintiff Walter Miller instituted this absestors product-liability action. He testified that he was exposed to asbestos through his work as an auto mechanic. He claims that he was exposed to asbestos containing dust from new drum brake linings that he and his fellow mechanics would grind using a brake grinding machine manufactured by Ammco. Plaintiff testified at trial that the brake grinding machine generated dust. Defendant Hennessy Industries, Inc. (Ammco") has brought the present post-trial motion pursuant to CPLR § 4401 and § 4404 and CPLR § 5501 seeking entry of judgment notwithstanding the verdict, a new trial, or in the alternative, remittitur of damages.

Defendant Ammco was the only remaining defendant when the trial of this action commenced. The jury rendered a verdict in favour of plaintiff and against defendant Ammco in the amount of $25 million, consisting of $10 million for past pain and suffering and $15 million for future pain and suffering. The jury allocated 86% percent of liability to Ammco and 14% to other entities. The jury also found that Ammco was reckless in failing to warn of the toxic hazards of asbestos.

Plaintiff, a mechanic, testified at trial regarding his exposure to Ammco grinders. He testified that over a three and a half year period, he used an Ammco grinder to grind brakes which contained asbestos. He claims that he was exposed to asbestos-containing dust while grinding the brakes and that this exposure was a substantial factor in causing his mesothelioma.

Ammco makes a number of arguments as to why the verdict should be set aside. It argues that (1) it did not owe plaintiff a legal duty to warn about the dangers of asbestos in automobile brakes, which was a product that it did not manufacture; (2) the evidence offered at trial was insufficient to establish general or specific causation under New York law; (3) the improper comment by plaintiff's counsel during opening statement that at the close of the case, plaintiff was going to ask for $50 million, warranted a mistrial: (4) it was entitled to a directed verdict on plaintiffs claim that it acted in reckless disregard of the safety of others and that the court's instruction on recklessness did not comport with controlling law; (5) the jury's allocation of fault is against the weight of the evidence; and (6) the evidence offered at trial was insufficient to \ -it support the jury's finding that plaintiff used an Ammco grinder and that Ammco failed to exercise reasonable care by marketing its grinders without an adequate warning. In the alternative, it argues that it is entitled to a new trial or a remittitur because the jury's award of damages was excessive.

***2** Section 4404(a) of the CPLR provides that "upon a motion of any party or on its own initiative, a court may set aside a verdict ... and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial ... where the verdict is contrary to the weight of the evidence, [or] in the interest of justice." The standard for setting aside a verdict is very high. The Court of Appeals has held that a verdict may be set aside only when "there is simply no valid line of reasoning and permissible inferences" which could have led to the conclusion reached by the jury. *Cohen v. Hallmark Cards, Inc.*, 45 N.Y.2d 493 (1978). The First Department held that a verdict "will not be set aside unless the preponderance of the evidence is so great that the jury could not have reached its verdict upon any fair interpretation of the evidence." *Pavlou v. City of New York*, 21 A.D.3d 74, 76 (1st Dept 2005). Moreover, the evidence must be construed in the light most favorable to the party that prevailed at trial. *See Motichka v. Cody*, 279 A.D.2d 310 (1st Dept 2001). Where the case presents conflicting expert testimony, "[t]he weight to be accorded the conflicting testimony of experts is 'a matter peculiarly within the province of the jury." ' *Torricelli v. Pisacano, 9* A.D.3d 291 (1st Dept 2004) (citation omitted); *see also Cholewinski v. Wisnicki*, 21 A.D.3d 791 (1st Dept 2005)

Ammco initially argues that the verdict must be set aside on the ground that it had no duty to warn about the dangers of asbestos in brakes manufactured by third parties because it had no role in placing these asbestos-containing brakes in the stream of commerce. Before the trial commenced, Ammco moved for summary judgment, arguing that under *Rastelli v. Goodyear Tire & Rubber Co*, 79 N.Y.2d 289 (1992), it had no duty to warn plaintiff about dangers from asbestos-containing brakes produced and sold by third parties. The motion for summary judgment was denied by Justice Moulton before the trial commenced. The court found that Ammco fell far short of demonstrating that it should prevail as a matter of law based on evidence presented by plaintiff and plaintiffs testimony that he and other mechanics used Ammco's product to grind asbestos-containing brakes; that the machine generated dust when it was used; that defendant knew of the dangers of the dust created by its machine by the early 1970's; and that it created a new attachment to better collect the dust in 1975, which it referred to in some of its advertisements as an "asbestos dust collector". The court held that these "allegations create a triable issue of fact as to whether defendant is liable for failing to warn of the dangers of using its brake-arcing machine to grind asbestos-containing brake linings." The court distinguished *Rastelli* on the ground that the tire and rim in *Rastelli* were meant to operate in a complementary fashion where, in the instant case, "defendant's instrumentality was used-to alter the composition of asbestos-containing products, and in doing so, it generated dust allegedly containing asbestos."

To the extent that Ammco is challenging the determination made by Judge Moulton denying its motion for summary judgment and rejecting the argument made by Ammco that there is no duty to warn as a matter of law and that this case should never have been sent for trial, its remedy is to appeal the denial of summary judgment.

With respect to Ammco is argument that the use of the term foreseeable in the jury charge was improper as it did not manufacture or sell asbestos products, the court finds that any argument that the use of the term foreseeable was improper is waived as defendant never objected to the use of the foreseeability language in the jury charge. *See* CPLR section 4110-b ("No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict stating the matter to which he objects and the grounds of the objection"); *Johnson v. Grant*, 3 A.D.3d 720 (3d Dept 2004).

However, even if the court were to address this argument, it would find that the jury instruction used by the court was proper and that it was proper to submit to the jury the question as to whether defendant had a duty to warn plaintiff in this case about the dangers of using its grinder with asbestos-containing brakes. The jury instruction which Ammco now challenges, which is taken directly from the language contained in PJI 2:120, stated:

***3** The manufacturer or seller of a product which is reasonably certain to be harmful if used in a way that the manufacturer should reasonably foresee is under a duty to use reasonable care to give adequate warning of any dangers known to it or which in the use of reasonable care it should have known and which the user of the product ordinarily would not discover.

The issue of whether it is proper to use this charge was addressed by the First department in *In re New York City Asbestos Litig. (Konstantin and Dummitt)*, 121 A.D.3d 230 (1st Dept 2014). In that case, the defendant argued to the First Department "that the use of the word foreseeability in the jury charge was so prejudicial to it that, at the very least, a new trial is necessary." *Id.* at 252. The court rejected this argument, holding as follows;

There is a place for the notion of foreseeability in failure to warn cases, where, as here, the manufacturer of an otherwise safe product purposely promotes the use of that product with components manufactured by others that it knows not to be safe. To be sure, mere foreseeability is not sufficient (see Surre, 831 F. Supp.2d at 802 ["a duty to warn against the dangers of a third party's product does not arise from foreseeability alone"]). This explains why the manufacturer was absolved of liability in Rastelli,' where it was not concerned with what type of rims would be used with its tires. However, this case is not even close to Rastelli because of Crane's demonstrated interest in the use of asbestos components with its valves. Accordingly, the charge as given had no potential to communicate the wrong standard to the jury.

Id.

The court further stated that the cases on the topic of the scope of the duty to warn:

together stand for the rather unremarkable proposition that where there is no evidence that a manufacturer had any active role, interest, or influence in the type of products to be used in connection with its own product after it placed its product into the stream of commerce, it has no duty to warn. The cases cited by the Dummitt plaintiff, however, demonstrate that where a manufacturer does have a sufficiently significant role, interest, or influence in the type of component used with its product after is enters the stream of commerce, it may be held strictly liable if that component causes injury to an end user of the product.

Id. at 250.

In the present case, as in Dummitt, the charge provided by the court had "no potential to communicate the wrong standard to the jury" as there was evidence introduced during the trial which demonstrated Ammco's "significant role, interest, or influence in the type of component used with its product.", D*ummitt*, 121 A.D.3d at 250. Initially, there was evidence presented at trial that Ammco knew that the overwhelming majority of brakes used with its product would be asbestos-containing brakes. There was testimony presented at trial that asbestos-containing brakes were used exclusively

in the 1960's and into the 1970's with a few exceptions. Moreover, there was testimony presented at trial that Ammco knew that its grinder would primarily be used to grind brakes which contained asbestos and that dust containing asbestos would be released when its product was used to grind these brakes. As a result, it specifically-designed its product to include a dust collection system to collect the asbestos-containing dust before it was released into the air, which it called an "asbestos dust collection system". There was also evidence that Ammco incorporated its knowledge that its machine would be used with asbestos brakes by incorporating this into its machine. Its corporate representative, Mr. Mouhtz, testified that Ammco grinders designed in the 1950's and 1960's came with an "optional part ... for a special grinder surface to be used with non-asbestos linings." Thus, it manufactured its grinding machines with the clear understanding that they were going to be used to grind asbestos brake linings. Finally, there was evidence that it knew of the hazards of asbestos at the time of plaintiff's exposure. The foregoing is sufficient to establish its role and interest in the type of brakes used with its product.

***4** Ammco next argues that it is entitled to a directed verdict or judgment notwithstanding the verdict because plaintiffs expert opinion was insufficient as a matter, of law to establish general or specific causation as required under the holding in *Parker v. Mobil Oil Corp., 7* N.Y.3d 434 (2006). In *Parker*, the court held that it "is well established that an opinion on causation should set forth a plaintiffs exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation.)." *Id.* at 448. However, "it is not always necessary for a plaintiff to quantify exposure levels precisely or use the dose-response relationship, provided that whatever methods an expert uses to establish causation are generally accepted in the scientific community." *Id.* In that case, the court rejected the plaintiffs experts' testimony that exposure to gasoline caused plaintiffs AML as "[p]laintiff's experts were unable to identify a single epidemiologic study finding an increased risk of AML as a result of exposure to gasoline." *Id.* at 450."

In *Cornell v. 360 W. 51st Realty LLC*, 22 N.Y. 762 (2014), the Court of Appeals again addressed the issue of what showing must be made to establish specific causation in a toxic tort case. It stated as follows:

Parker explains that 'precise quantification' or a 'dose-response relationship' or 'an exact numerical value' is not required to make a showing of specific causation. *Parker* by no means, though, dispensed with a plaintiffs burden to establish sufficient exposure to a substance to cause the claimed adverse health effect ... As the Circuit Court of Appeals for the Eight Circuit commented ..., there must be some evidence from which a factfinder can conclude that the plaintiff was exposed to levels of that agent that are known to cause the kind of harm that the plaintiff claims to have suffered.

Id. at 784.

In *Lustenring v. AC&S, Inc.*, 13 A.D.3d 69 (1st Dept 2004), v. *denied A* N.Y.3d 708 (2005), the First Department addressed what showing must be made to establish specific causation in an asbestos case. According to the court, the evidence showed that plaintiffs worked all day for long periods in clouds of dust which was raised by the manipulation and crushing of defendant's packing and gaskets, which were made with asbestos. The court found that "[v]alid expert testimony indicated, that such dust, raised from asbestos products and not just from industrial air in general, necessarily contains enough asbestos to cause, mesothelioma." *Id.* at 70.

In the present case, the court finds that there was sufficient evidence for the jury to find general causation. All that a plaintiff is required to show with respect to general causation in an asbestos case is that the toxin, asbestos, is capable of causing mesothelioma if the plaintiff is exposed to a sufficient dose. There is no question that this has been established. The argument by defendant that there must be epidemiological studies showing a relationship between exposure to asbestos dust from grinding brakes containing asbestos with mesothelioma is without basis as no court has ever imposed this requirement nor could there be epidemiological studies for every single product ever manufactured that contains asbestos or every product that is used with asbestos-containing products.

The court also finds that there was sufficient evidence for the jury to find specific causation as the plaintiff presented expert testimony that plaintiffs mesothelioma was caused by exposure to asbestos which occurred when using defendant's product for the purpose for which it was intended and the methods that plaintiff's experts used to reach these conclusions were based on principles which are generally accepted in the scientific community. Initially, the trial and appellate courts in New York which have addressed the issue, both before and after *Parker* have been decided, have consistently held that the presence of visible dust from an asbestos containing product establishes a sufficient foundation for an expert to conclude that the use of such product was a substantial factor in causing mesothelioma and Ammco has not cited to any New York cases where a court has not upheld a finding of specific causation where visible dust was present. *See, e.g., Lustenring, Id; Perm v. Amchem*, 85 A.D.3d 475,476 (1st Depf 2010;("On the issue of causation, sufficient evidence was provided by [plaintiffs] testimony that visible dust emanated while working with the dental liners and by his expert's testimony that such dust must have contained enough asbestos to cause his mesothelioma"); *Matter of New York Asbestos Litig*, 28 A.D.3d 255 (1st Dept 2006)(evidence fairly interpreted, permitted liability verdicts reached by the jury where the "evidence demonstrated that both plaintiffs were regularly exposed to dust from working with defendant's gaskets and packing, which were made of asbestos. The experts indicated that such dust from asbestos containing products contained enough asbestos to cause mesothelioma"); *Berger v. Amchem Products*, 13 Misc. 3d 335, 346 (Sup;Ct NY Co 2006)("It has long been established that mesothelioma caused by asbestos exposure is frequently not dose related and relatively small numbers of fiber that are inhaled may remain in the lungs for long periods and cause mesothelioma"); *Cf. Arthur Juni v. A.O. Smith Water Product*, Index No. 190315/2012 (Sup Ct NY Co 2015)(evidence offered insufficient to prove that dust to which plaintiff was exposed contained any asbestos).

***5** In the present case, plaintiff testified during the trial that he was exposed to visible dust when he was grinding asbestos-containing brakes with defendant's grinder over a number of years. Specifically, he testified "there's a fair amount of dust from the process of grinding the linings." Trial transcript p. 87. Moreover, the. court finds that the expert testimony of Dr; Moline and Dr. Rom, who both relied on plaintiff's testimony that he was exposed to visible dust when he was grinding asbestos-containing brakes with defendant's grinder, was sufficient to present the issue of specific causation to the jury to be resolved. Dr. Rom specifically testified that to a reasonable degree of medical certainty, plaintiffs exposure to asbestos from his work on the Ammco brake grinder was a substantial contributing factor to his mesothelioma. He testified that if plaintiff shaved brake linings on an Ammco machine anywhere from three times a day to three times a week from approximately 1973 until 1979, and the process created. visible asbestos dust that plaintiff breathed, that "exposure for that frequency, doing that type of brake repair job, proves enough asbestos fibers during the it's to cause a malignant mesothelioma. "Trial transcript p. 242-243. He also testified that the dose calculation provided by plaintiffs expert of .024 fibers/cc for plaintiff's lifetime was a sufficient exposure to cause mesothelioma based on recent publications which show mesothelioma from this type of exposure, Trial transcript p. 243-244. Dr. Moline also concluded that plaintiff s exposure to asbestos from his work on Ammco grinders was a substantial contributing factor to his mesothelioma.. She specifically testified that if a worker, such as plaintiff is breathing visible dust, the dust contains a very high concentration, not a concentration that is anywhere near what may be in background air, which is very low and microscopic. Trial transcript p. 322. She. also testified that if a worker is working with an asbestos-containing material and they see visible dust, "we know that its an order much higher than .24 fibers/cc-yrs." Trial transcript p. 366.

The court finds that the methods used by plaintiff's expert at trial to establish that plaintiff was exposed to sufficient levels of asbestos from using Ammco's products for the product to have been a substantial contributing factor in causing plaintiffs mesothelioma are generally accepted in the scientific community. Based on the testimony presented at trial, the expert sufficiently established that it is generally accepted in the scientific community that there is no safe level of exposure, to asbestos, that even a low dose exposure to asbestos can cause mesothelioma and that plaintiff was exposed to asbestos from the grinders based on the release of visible dust when the brakes were being grinded. As the Court of Appeals made clear in *Parker*, "it is not always necessary for a plaintiff to quantify exposure levels precisely or use the dose-response relationship, provided that whatever methods an expert uses to establish causation are generally accepted in the scientific community." *Id.* Based on the foregoing, the court finds that there was sufficient evidence to support a finding by the jury of specific causation in this case.

Ammco's argument that plaintiffs counsel's demand for $50 million in his opening statement required a mistrial is without merit. The court has already granted defendant's request for a curative instruction to the jury based on plaintiffs actions and instructed the jury that it should disregard any statement made by plaintiffs counsel regarding a specific amount he is seeking for the plaintiff and that the statement should be stricken from the record. As the court stated during the trial, defendant is not entitled to a mistrial based on this incident and defendant has not cited any cases holding to the contrary.

Ammco next argues that the court should set aside the jury's verdict that it acted with reckless disregard for plaintiff s safety as the. evidence at trial did not warrant submission of the reckless disregard issue to the jury and the jury's finding of recklessness was against the weight of the evidence. *Maltese v. Westinghouse Electric Corp.*, 89 N.Y.2d 955;.(1997;. The court finds that the jury's finding that Ammco acted with reckless disregard is supported by the record and should not be set aside. There was a valid line of reasoning and permissible inferences which could have led a rational jury to conclude based on the evidence presented at trial that Ammco acted with reckless disregard. Initially, there was evidence presented at trial from which a jury could have rationally concluded that Ammco had actual knowledge that exposure to high concentrations of asbestos over time could cause injury. Plaintiff presented sufficient evidence with respect to the dangers of asbestos exposure from publically available information as well as information available in various trade journals and in other literature and in government regulations and statutes, including worker's compensation laws, so that.the jury could find that Ammco knew or should have known of the dangers of exposure to asbestos. Moreover, by 1973, when plaintiff first alleged that he began using an Ammco grinder, Ammco was already conducting independent. tests on their grinders to. assess their safety with respect to the release of. asbestos in connection with their use.

***6** There was also evidence presented at trial from which a jury could have rationally concluded that during the period of plaintiff s claimed exposure to asbestos in connection with his grinding of asbestos-containing brakes on Ammco's grinder, Ammco "has intentionally done an act of an unreasonable character in disregard of a known and obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." *Id.* There was evidence presented at trial that Ammco created a new and updated dust collection system for its grinders in 1975 which is the time period when plaintiff claimed to have been using an earlier version of Ammco's grinder; that Ammco was aware at that time that there were grinders still in use that did not have the updated dust collection system created by Ammco; that the updated dust collection system contained warnings that were not provided in connection with the earlier version of the grinder; that Ammco made no effort to provide end users of the earlier grinders such as plaintiff with the warnings that were provided with the new version of the grinder; and that Ammco knew that the older, version of the grinder exposed users to a risk of exposure to asbestos-containing dust and that Ammco made no effort to provide these users any warnings in violation of its continuing duty to warn post sale. In 1975, Ammco obtained a patent for its new dust collection system. In the application for the patent, Ammco stated that the dust created by the earlier model of the grinders, which is the grinder that plaintiff would have been using, "is a potential hazard to the machinery operators and other persons in the same general location." Trial transcript p. 563-564. According to the patent application:

a serious problem with this prior type are type of dust collector is that when the bag becomes filled with dust and /or the pours thereof become clogged with the dust particles, there is insufficient suction to remove the dust being produced and the motor of the dust collector becomes overloaded. Moreover, the dust particles are blown into the atmosphere. In fact, because of the danger inherent to the person using this type of equipment, there are many localities which have banned the use of brake shoe grinding machinery which incorporates the prior are type of dust collector ... Another problem associated with the prior are type of dust collector is that of disposing of the collected dust particles without permitting at least some of the dust to escape into the atmosphere.

Trial transcript p. 564-566. At this time when Ammco acknowledged in its own patent application that it was aware of the hazards to persons who were using its prior dust collector, it made absolutely no effort to attempt to warn the end users of the dangers with respect to the earlier grinders, although there was evidence presented at trial that it could have

ascertained where these grinders were located. Moreover, although it issued more specific warnings with its new grinders, it failed to issue any warnings to users of the older models of the grinders which were admittedly less safe than the newer grinders. Based on this evidence, there was a rational basis for the jury to conclude that Ammco "has intentionally done an act of an unreasonable character in disregard of a known and obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." *Id.*

Ammco next argues that the court's instruction on recklessness was improper as it failed to adequately convey to the jury the level of culpability required to support a recklessness finding. It argues that the jury charge contained in pattern jury instruction 2:275.2, which is the charge that this court used, fails to incorporate the standard required by the Court of Appeals decision in *Maltese*. This argument is without basis as the court finds that the language it used to instruct the jury on the recklessness standard was proper. As Justice Madden recently held in *Assenzio v. A.O Water Smith Prod*, "in *Maltese*, the court did not hold that any specific language was required, and the PJI charge, as given, adequately expressed the standard." Moreover, the First Department in *In re New York City Asbestos Litig. (Konstantin and Dummitt)*, 121 A.D.3d 230 (1st Dept 2014) ("Dummitt") recently upheld a finding of recklessness as to other defendants in an asbestos product liability litigation where the same exact language was used in charging the jury on recklessness. This court has also held, in the Hillyer case, that the charge contained in the PJI is not improper. Moreover, defendant has not cited any cases where a court has found that the language used in the pattern jury instruction to define recklessness has ever been overturned by any court as not articulating the proper standard despite the fact that tin's charge has been used in countless litigations, including numerous asbestos and non-asbestos cases, and despite the fact that the Maltese decision is from 1997, approximately eighteen years ago.

*7 Ammco's argument that it is entitled to a new trial because the jury's allocation of fault is not supported by the evidence is without basis. The court finds that there was a sufficient evidentiary basis for the jury's determination as to the allocation of fault based on the evidence presented at trial, which allocated 86% percent of the fault to Ammco.

The argument by Ammco that the jury's findings regarding product identification and negligence should be set aside as no rational jury could have found that the brake grinder plaintiff used was an Ammco brake grinder or that Ammco failed to provide reasonable care in marketing its grinder is without merit. There was sufficient evidence before the jury to support its finding that plaintiff worked with Ammco grinders and sufficient evidence before the jury for it to determine that Ammco failed to exercise reasonable care.

The next issue the court must address is whether the jury's award to plaintiff of $10 million for past pain and suffering and $15 million for one year of future pain and suffering was excessive and if so, whether a new trial on the issue of damages should be ordered. The standard to be applied is whether the award "deviates materially from what would be reasonable compensation." CPLR' § 5501 (c). In order to determine whether the award was excessive, the court must compare the instant case with analogous cases with awards that have been previously upheld. *See Donlon v. City of New York*, 284 A.D.2d 13,18 (1st Dept 2001). The most recent decision from the First Department addressing the issue of the amount of damages to be awarded in a mesothelioma case is *Dummitt*. In that case, the First Department upheld an award of past pain and suffering of $4,5 million and $3.5 million for future pain and suffering. It also upheld an award of past pain and suffering of $5.5 million and an award for future pain and suffering for $2.5 million. In other decisions, the First Department upheld an award of $1.5 million for past pain and suffering and $2 million for future pain and suffering *(Perm v. Achem Products* 85 A.D.3d 475) (1st Dept 2011) and $3 million and $4.5 million respectively (*Matter of New York Asbestos Litig. Marshall*, 28. A.D.3d 255) (1st Dept 2006).

Based on all the circumstances of plaintiffs injuries, the award of $10 million for past pain and suffering and $15. million for one year of future pain and suffering deviates materially from what would be. reasonable compensation. Pursuant to CPLR 5501(c), the award for past and future pain and suffering is vacated and a new trial ordered on the issue of damages for past and future pain and suffering unless plaintiff within 30 days of service of a copy of this decision and

order with notice of entry stipulates to reduce the award of damages for past pain and suffering to $5 million and future pain-and suffering to $4 million.

Accordingly, it is hereby

ORDERED that the branches of Ammco's motion for a judgment notwithstanding the verdict is denied; and it is further

ORDERED that the portion of Ammco's motion to set aside the verdict is granted only to the extent of vacating the award of past and future pain and suffering fb plaintiff and ordering a new trial on this issue unless plaintiff within thirty days of service of a copy of this decision. and order with notice of entry stipulates to reduce the amount of past pain and suffering to $5 million and future pain and suffering to $4 million; and it is further

***8** ORDERED that the balance of Ammco's motion to set aside the verdict is denied

Date 5/3/16

Enter: <<signature>>

JSC

End of Document