

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

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: ELOYD ROBINSON ET AL., : Docket Number: 2015 CAM 008980  
: Plaintiffs, :  
: :  
: vs. :  
: :  
: THE METROPOLITAN WASHINGTON, :  
: ORTHOPAEDIC ASSOCIATION ET AL.:  
: Defendants. :  
: Thursday, July 20, 2017  
----- x Washington, D.C.

The above-entitled action came on for a hearing  
before the Honorable NEAL E. KRAVITZ, Associate Judge, in  
Courtroom Number 100.

APPEARANCES:

On Behalf of the Plaintiffs:

PATRICK MALONE, Esquire  
Washington, D.C.

On Behalf of the Defendants:

D. LEE RUTLAND, Esquire  
TIFFANY RANDOLPH, Esquire  
Washington, D.C.

17-05074

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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Your Honor, calling the  
3 matter of Eloyd Robinson, et al. v. The Metropolitan  
4 Washington Orthopaedic Association, et al., 2015 CAM  
5 008980.

6 Please stand and state your names for the  
7 record.

8 MR. MALONE: My name is Patrick Malone. I'm  
9 here for the Robinsons.

10 MR. RUTLAND: Lee Rutland and Tiffany Randolph  
11 on behalf of the defendants, Your Honor.

12 THE COURT: Good afternoon. I am prepared to  
13 make a ruling on the motion, but I don't know if anyone  
14 had felt strongly about adding anything orally here this  
15 morning in addition to the written papers?

16 MR. RUTLAND: I do not, Your Honor. I'm willing  
17 to submit on the record.

18 MR. MALONE: Yes, I put everything I had to say  
19 in the opposition.

20 THE COURT: All right. So as you know, the  
21 defendants, Rida Azer and The American International  
22 Orthopaedic Association, LLC, have filed a timely motion  
23 for a new trial, or in the alternative, for remittitur of  
24 the \$8.35 million verdict returned by the jury on June 15,  
25 2017 at the end of a two-week trial.

1           The defendants contend that the plaintiffs'  
2 counsel, and witnesses, made several inflammatory  
3 statements concerning the extent of Dr. Azer's negligence,  
4 and its impact on Mr. Robinson, and that the plaintiffs'  
5 counsel improperly injected the issue of the plaintiffs'  
6 race into the trial in an effort to appeal to the jury's  
7 emotions, sympathies, and perceived biases.

8           The defendants also contend that the amount of  
9 damages awarded, \$6,750,000 in non-economic damages on Mr.  
10 Robinson's medical malpractice claim, and \$1,600,000 on  
11 Ms. Robinson's loss of consortium claim, was against the  
12 weight of the evidence, and was excessive in the  
13 circumstances. The defendants request remittitur to an  
14 amount within the \$6 million limit of their insurance  
15 policies. The plaintiff have filed an opposition to the  
16 motion.

17           Let me talk first about the alleged trial  
18 errors. The defendants complain of statements made by the  
19 plaintiffs' counsel that Dr. Azer mutilated and killed Mr.  
20 Robinson's leg, and then Dr. Azer should be, quote, held  
21 accountable, end quote, for his actions.

22           The defendants also complained that Dr. Shapiro,  
23 the plaintiffs' standard of care expert, testified that  
24 Dr. Azer's breaches of the standard of care were  
25 egregious, and that the plaintiffs' counsel then repeated

1 this assertion in closing argument, along with other  
2 allegedly improper references such as to the Grim Reaper.

3 In addition, the defendants complained of the  
4 injection of race into the case by the plaintiffs' counsel  
5 in eliciting testimony from Mr. Robinson, and commenting  
6 in his jury arguments that Mr. Robinson's experiences in  
7 the 1940's and 1950's playing baseball in the old Negro  
8 leagues, and on the impact of those experiences on Mr.  
9 Robinson's emotional distress, and other non-economic  
10 injuries caused by Dr. Azer's negligence.

11 Finally, the defendants complain of what they  
12 contend was an improper Colston argument, C-O-L-S-T-O-N,  
13 by the plaintiffs' counsel in the course of his closing  
14 argument. The defendants raised many of these same points  
15 as objections during the trial, and my rulings on those  
16 objections are part of the record of the case.

17 I can say now having had additional time to  
18 study and think about these issues that I remain  
19 unpersuaded that there was anything improper about any of  
20 the jury arguments or testimony complained of.

21 Evidence supported the expert's opinion that Dr.  
22 Azer's violations of the standard of care were egregious,  
23 and the plaintiffs were within their rights, in my view,  
24 to present expert testimony to that effect, specifically  
25 to prove that this was not a close question on whether

1 there was -- on whether there were deviations from the  
2 standard of care. Moreover, once the evidence was  
3 properly before the jury, the plaintiffs' counsel was  
4 entitled to refer to it in his closing argument.

5 In addition, as the plaintiffs argue in their  
6 opposition to the motion, the evidence showed that Mr.  
7 Robinson's leg did die, and that it certainly was  
8 mutilated, albeit unintentionally, before it was amputated  
9 above the knee, all as a result of Dr. Azer's negligence.

10 In addition, the evidence of Mr. Robinson's days  
11 playing baseball in the Negro leagues was limited in  
12 scope, and was directly relevant to the jury's  
13 understanding of the effect on Mr. Robinson's life, of his  
14 post-amputation, inability to walk, his beat as a security  
15 guard near National Stadium, and to talk with people about  
16 his past as a professional baseball player.

17 Finally, the suggestion in closing argument by  
18 plaintiffs' counsel that jurors should write down their  
19 initial thoughts about the amount of damages, which could  
20 be eight figures, or possibly even more, did not run afoul  
21 of the Court of Appeals decisions in the Colston case, and  
22 the Hechinger case.

23 Plaintiffs' counsel never advanced any  
24 particular number to the jury, and in the circumstances,  
25 it was clear to the jury that it was up to them to

1 determine how much, if anything, to award the plaintiffs  
2 in non-economic damages.

3           In sum, I think the defendants got a fair trial  
4 free of any improprieties by the plaintiffs' counsel, or  
5 witnesses, but equally important, I can say with great  
6 confidence having been present here on the bench  
7 throughout the entire trial, that none of the statements  
8 complained of by the defendants in their motion had any  
9 significant or material bearing on the verdict rendered by  
10 the jury. I have supreme confidence that this verdict was  
11 rendered based on the evidence and jury instructions, and  
12 without regard to these allegedly inflammatory statements  
13 by plaintiff's counsel, and Dr. Shapiro.

14           In reality here what we have is a complaint  
15 about a few stray comments in the course of a two-week  
16 trial while the evidence of Dr. Azer's negligence was  
17 overwhelming, in my view, from this objective standpoint.

18           It is important to note, moreover, that the  
19 defendants have not complained of any impropriety in the  
20 jury instructions, or any error in the jury instructions.  
21 The presumed correctness of those jury instructions gives  
22 me even more assurance and confidence that the jury  
23 decided the case based on the facts and the law rather  
24 than on any improper considerations.

25           Now, with regard to the size of the verdict, the

1 parties agree that the legal standard for remittitur is a  
2 verdict so large that it, quote, shocked the conscience,  
3 end quote, of the Court. In the context of the  
4 defendants' motion for a new trial, the defendants must  
5 show that the jury's award was, quote, against the clear  
6 weight of the evidence, end quote.

7           Some of the participants in this trial may have  
8 been surprised at the size of the verdict. I don't doubt  
9 that if that's the case. Both of the plaintiffs are  
10 elderly, and it would not have been unexpected or  
11 surprising had the jury awarded smaller amounts to them to  
12 account for the relatively short periods of time that one  
13 could expect the plaintiffs' pain and suffering, and other  
14 non-economic damages, to accrue relative to damages that  
15 might be awarded to younger persons who have suffered  
16 similar injuries.

17           Nevertheless, the pain endured by Mr. Robinson,  
18 and the injuries and damages suffered by both plaintiffs,  
19 were shown to be truly profound, and were amply supported  
20 in the evidence presented at the trial. Dr. Azer's  
21 negligence converted Mr. Robinson from the outgoing,  
22 energetic 82-year-old man, who was still working and  
23 living a full life before the surgery, into the recluse he  
24 became afterwards, unable to work, enjoy friends and  
25 family, or even venture out of his bedroom on more than

1 the rarest of occasions.

2           That same negligence converted Ms. Robinson into  
3 a full-time caretaker for her husband, unable to enjoy the  
4 marital relationship as she had hoped and planned, and  
5 unable to live her own life to any meaningful extent.

6           It was interesting to observe the way the  
7 Robinsons testified as the trial in what I would  
8 characterize as understated manners. Both Mr. and Ms.  
9 Robinson are proud people, and they were obviously  
10 reluctant to dwell on their own injuries, or the impact  
11 those injuries have had on them, and will continue to have  
12 throughout the rest of their lives. But as I said  
13 earlier, the injuries that Mr. Robinson has suffered have  
14 been truly profound and life-altering for both him and his  
15 wife.

16           In my view, nothing about the size of the  
17 verdict was against the clear weight of the evidence, and  
18 nothing about the size of the evidence shocked my  
19 conscience.

20           And for all of those reasons, the defendants'  
21 motion for a new trial, or in the alternative, for  
22 remittitur, will be denied, and I'll be issuing a brief  
23 written order later today just saying that for the reasons  
24 stated on the record here in open court, the motion is  
25 denied.



1 MR. MALONE: Thank you.

2 THE COURT: Is there anything else that we need  
3 to do in this case?

4 MR. RUTLAND: The only other issue would be if a  
5 decision is made to file an appeal, we would have to post  
6 a bond, and part of that would be post-judgment interest.

7 I'm not sure what the Court of Appeals' schedule  
8 is these days as to how long it could be expected, and  
9 what would be reasonable to anticipate for purposes of  
10 filing a post-trial bond. I'm assuming something in the  
11 area of 18 months.

12 I don't know if Your Honor has any additional  
13 experience in that as to what -- because I think the trial  
14 court has to approve the amount of a bond.

15 MR. MALONE: That would be fine with me. I  
16 think 18 months to two years is unfortunately kind of  
17 typical nowadays.

18 THE COURT: One question I would have is the  
19 extent to which you've already ordered the trial  
20 transcript.

21 MR. RUTLAND: We've ordered parts, not the  
22 entire transcript.

23 THE COURT: Because that's usually the -- that's  
24 the first delay.

25 MR. MALONE: Right.

1 THE COURT: They won't even -- they won't even  
2 set a briefing schedule until the appellant certifies that  
3 the record is complete.

4 MR. RUTLAND: Oh.

5 THE COURT: Once the briefing schedule -- once  
6 the briefing schedule has been set, and the briefs have  
7 been filed, I think oral arguments tend to be maybe about  
8 six months after that, but I'm really not confident, and  
9 then it really, of course, varies wildly depending on how  
10 complicated the Court thinks the issues are, and which  
11 judge is assigned to write it, and all of that.

12 I would think 18 months would be very  
13 optimistic. I would think two years would probably be  
14 more reasonable, but I guess that's just my initial  
15 reaction.

16 MR. RUTLAND: Yeah, I don't know if the Court --

17 THE COURT: It sounds like the plaintiffs -- it  
18 sounds like they would agree to it anywhere in that time  
19 range.

20 MR. MALONE: Yes, sure.

21 MR. RUTLAND: Okay. Thank you, Your Honor.

22 THE COURT: Okay. So if you get to that point,  
23 and you want to file -- I guess you would file a motion  
24 for a stay based on the suit filing of the supersedeas  
25 bond. If there's agreement, it can be a consent motion,

1 and that will make it easier.

2 MR. MALONE: Right.

3 MR. RUTLAND: Sure. Thank you, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. MALONE: Thank you, Judge.

6 THE COURT: Have a good rest of the summer. All  
7 right.

8 THE DEPUTY CLERK: Court is adjourned.

9 (Thereupon, the hearing was concluded.)

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√ Digitally signed by Cecelia Black

ELECTRONIC CERTIFICATE

I, Cecelia Black, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of ELOYD ROBINSON ET AL. V. THE METROPOLITAN WASHINGTON ORTHOPAEDIC ASSOCIATION, ET AL., Case No. 2015 CAM 008980 in said Court, on the 20th day of July 2017.

I further certify that the foregoing 11 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 18th day of August 2017.

*Cecelia Black*

Transcriber