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OPINIONS**

**SUPERIOR COURT OF NEW JERSEY  
COUNTIES OF  
ATLANTIC AND CAPE MAY**

CAROL E. HIGBEE, P.J.Cv.

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**MEMORANDUM OF DECISION ON MOTION**  
**Pursuant to Rule 1:6-2(f)**

**CASE:** Andrew McCarrell v. Hoffmann-La Roche, Inc.  
**DOCKET #:** ATL-L-1359-03  
**DATE:** December 11, 2012  
**MOTION:** JNOV or New Trial  
**ATTORNEYS:** Michelle Bufano, Esq. – Defendant  
Paul Schmidt, Esq. – Defendant  
David Buchanan, Esq. – Plaintiff  
Michael Hook, Esq. – Plaintiff

Having carefully reviewed the moving papers and any response filed, I have ruled on the above Motion as follows:

**Statute of Limitations**

The defendant Hoffmann-La Roche Inc. moves to dismiss the plaintiff Andrew McCarrell's cause of action based on the statute of limitations notwithstanding the second jury verdict in his favor.

Andrew McCarrell is from Alabama. He was prescribed Accutane and sustained his injuries in the State of Alabama. The product was manufactured in New Jersey and the decisions on what warnings should be supplied with the product were also made in New Jersey by the

defendant Hoffmann-La Roche whose principal place of business is in New Jersey. Both Alabama and New Jersey have two year statutes of limitations for product liability claims. N.J.S.A. 2A:14-2 and Alabama Code 6-2-38(1). New Jersey allows for equitable tolling of the statute of limitations for all tort claims until the plaintiff knows or should know of both injury and a link between the injury and fault on the part of the defendant. See Lopez v. Swyer, 62 N.J. 267, 272-75 (1973). Alabama has not adopted an equitable discovery rule similar to the one in New Jersey. Alabama has allowed for tolling of the statute in certain types of cases such as toxic tort cases where the injury is latent until the injury becomes manifest.

Andrew McCarrrell's complaint was filed over two years after he knew he was injured. So, if Alabama law is now applied to his case, the statute of limitations would bar his action. In fact, however, New Jersey law has been applied to the statute of limitations issues in his case by this court since the first trial. The statute of limitations was one of the issues raised by the defendants on appeal after his first trial and the Appellate Division affirmed this court's finding that the discovery rule tolled the statute of limitations thereby making his claim timely.

The Appellate Division's decision written by Judge Sabatini held as follows:

After balancing the competing policy interests at stake, the trial judge concluded in a detailed written opinion that New Jersey's statute-of-limitations law applies to this case. The judge recognized that New Jersey has "strong contacts" to defendants, who are both corporations of this State and who manufacture Accutane here, while Alabama, the State where plaintiff resides, has "very little articulated interest" in applying its limitations statute to this lawsuit venued in New Jersey. We believe the judge's reasoning on this point was sound, and was consistent with our supervening decision in Smith v. Alza Corp., 400 N.J. Super. 529, 543, 948 A.2d 686 (App. Div. 2008) (applying New Jersey's statute of limitations law to a case filed by an Alabama resident against a New Jersey drug packager).

We also agree that the judge had ample factual grounds to find that our State's two-year limitation period should be equitably tolled to accommodate plaintiff's lawsuit. Plaintiff took Accutane in 1995 and was diagnosed with IBD in 1996. Although plaintiff did not file the instant lawsuit until 2002, the court deemed

credible his testimony that he did not know of the association between Accutane and IBD until his grandmother showed him, many years after his IBD diagnosis, an advertisement for a law firm pursuing Accutane cases. The judge did not misapply her authority in applying equitable tolling principles to this setting. *R.A.C. v. P.J.S., Jr.*, 192 N.J. 81, 98-104, 927 A.2d 97 (2007); *Lopez v. Swyer*, 62 N.J. 267, 273-76, 300 A.2d 563 (1973).

[*McCarrell v. Hoffmann-La Roche, Inc.*, No. A-3280-07T1, 2009 N.J. Super. Unpub. LEXIS 558, at \*118-20 (App. Div. March 12, 2009)].

The conflict of laws standard applied by this court before the first trial was the “governmental interest” test and, based on the analysis at that time, this court applied New Jersey law. The Appellate Division heard oral argument on McCarrell on December 1, 2008 and issued its decision affirming the choice of New Jersey law on March 12, 2009.

After the first trial, but before the Appellate Division argument and months before the Appellate Division decision was rendered, the New Jersey Supreme Court declared that the choice of law analysis standard was to be the “most significant relationship test” set forth in the Restatement (Second) of Conflict of Laws (1971). *P.V. ex rel. T.V. v. Camp Jaycee*, 197 N.J. 132 (2008). The Camp Jaycee opinion specifically noted that the Restatement (Second) analysis had been used to decide conflicts in state laws by New Jersey courts even though the standard was “governmental interest.” *Id.* at 135-36 (“although we have traditionally denominated our conflicts approach as a flexible ‘governmental interest’ analysis we have continuously resorted to the Restatement (Second) of Conflict of Laws in resolving conflict disputes arising out of torts”). The history of the standards/tests used to decide conflicts between state laws is described in the opinion. Notably, until 1967 there were bright line rules that were set forth in the Restatement (First) of Conflict of Laws (1934) that gave the courts little discretion. *Id.* at 138. The standard for tort actions was *lex loci* which meant the law of the state where the injury occurred was the

law applied. Id. The fact that this standard was attacked by scholars as inflexible and often unfair led to its abandonment in most states. Id.

The “governmental interest” test adopted in 1967 required the court to first identify if there was conflict in laws of the states with contacts to the litigation. If there was, the court was to identify the governmental policies underlying the law of each state and how their policies are affected by each state’s contacts to the litigation. Id. at 139. The courts of New Jersey, while applying the governmental interest analysis, frequently used the Restatement (Second) to identify each state’s relationship to the litigation. Certainly in this case, as in most tort cases, when this court made a conflict of law decision a part of the court’s thinking, it was influenced by the Restatement (Second). There is no question that there is some overlap of the two standards, and both require a nuanced and flexible analysis of many factors by the court that impact the decision of what law to apply.

Under the new standard adopted by the Camp Jaycee decision, the analysis still starts by determining if there is a true conflict in the laws. The second step in a tort action under the Restatement is a presumption that the law of the state where the injury occurred should apply, but this presumption can be overcome by a showing that most significant relations are with another state. The government policy and interest are part of the analysis under the most significant relationship test. The government interest test as applied by this court in this case included an analysis of the relationships/contacts with each state. The majority of the Supreme Court in Camp Jaycee stated that “the Restatement test embodies all the elements of the government interest plus a series of other factors.” Id. at 142. In fact, the majority and dissenting opinions in Camp Jaycee dispute which of the tests is more nuanced. Although the opinions of the majority and minority clashed, both agreed that flexibility and nuanced decision

making by the court is a good thing. There was no suggestion that the presumption set forth in the Restatement (Second) returned us to the old days of *lex loci*.

The defense now argues that the change from a “government interest standard” to “most significant relationship” standard applied by the Appellate Division and the Supreme Court in Cornett v. Johnson & Johnson, 211 N.J. 362 (2012) changed the law in New Jersey and requires this court to reverse itself and reverse the Appellate Division decision in McCarrell on the statute of limitations issue after the second jury verdict in plaintiff’s favor. The plaintiff argues that the change in the law did not occur in 2010 when Cornett was first decided by the Appellate Division, but occurred before the McCarrell decision was rendered by the Appellate Division when Camp Jaycee was decided. The plaintiff argues that he relied on the decision of this court and the Appellate Division applying New Jersey law and Cornett is not new law that should change these decisions.

This court for several different reasons finds that the claims of Andrew McCarrell are not barred by the statute of limitations and that New Jersey law applies. This court and the plaintiff in this case relied upon the Appellate Division decision that the statute of limitations did not bar Andrew McCarrell’s cause of action. That decision was the law of the case and as a result of the decision, the plaintiff and the defendant went through the enormous expense of a second trial. This was an eight week trial that cost the plaintiff and the defendant considerable expense.

Under the law of the case doctrine, “where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit.” Bahrle v. Exxon, 279 N.J.Super. 5, 21 (App. Div. 1995) (citing Slowinski v. Valley Nat’l Bank, 264 N.J.Super. 172, 179 (App. Div. 1993)). Such a decision should be respected by equal and lower courts during the pendency of that case. State v. Reldon,

100 N.J. 187, 203 (1985). The doctrine as applied to equal courts is not absolute and is subject to discretion. Id. at 205. The established exception is where there has been an intervening and retroactive change in the law. See, e.g., Sisler v. Garnett Co., 222 N.J. Super. 153, 160 (App. Div. 1987).

In this case, the issue of what state law to apply was clearly appealed and decided by the Appellate Division. This court is bound by that decision and fortunately it is a decision the court agrees is correct. The defendant argued the issue of what law to apply at the Appellate level. The change in conflict of law standard was announced in the Camp Jaycee decision, before the oral argument and before the decision in McCarrell. The defendant has teams of lawyers from at least three high level law firms. They regularly update the court as soon as a new decision comes down, and if they wanted to, they could have presented that argument to the Appellate Division. Cornett did not change the law and is not new law. It just applies the standard set forth earlier in Camp Jaycee, which was already in effect when the Appellate decision was rendered.

Cornett does not change the result reached by this court and by the Appellate Division. As stated above, in Camp Jaycee the courts include "government interest" analysis and add other factors to the conflict of law analysis, many of which were already considered in practice by our courts before Camp Jaycee. The Restatement (Second) of Conflict of Laws and its listed factors to consider were regularly part of the analysis used by this court and other courts before the label of the standard was changed. The "substantial relationship" test with "governmental interest" as only one aspect of the test would not change the outcome. This case is substantially different from the Cornett case. In Cornett, the Appellate Division noted plaintiff was from Kentucky and the defendant was a New Jersey corporation, but the medical product was manufactured and

labeled in a third state, not Kentucky or New Jersey. Cornett v. Johnson & Johnson, 411 N.J. Super. 365, 373 (App. Div. 2010). There was no conflict of laws because both Kentucky and New Jersey had a discovery rule and there were almost no contacts with New Jersey. The Cornett decision and this case are very distinct from each other. The Appellate Division relied not just on “government interest,” but also the “contacts” with New Jersey in their affirmance of this court’s decision after McCarrell one. Thus, applying the most significant relationship test would not change the result of the application of New Jersey law.

The defendant points out that New Jersey has no interest in providing compensation to out-of-state plaintiffs. It further argues that the legislature in passing the Products Liability Act (PLA), N.J.S.A. 2A:58c-1 to -11, created a standard of protection of New Jersey corporations with little or no regard for the rights of citizens of our sister states.

Making conflict of laws decisions requires nuanced analysis, as the Supreme Court in Camp Jaycee holds. Certainly, when doing an analysis of the conflicts equation, the fact that either plaintiff or defendant is from out-of-state is always true. The fact that any state has a heightened interest in the fate of its own citizens and its own businesses is true as well and is part of the decision making process. The New Jersey Legislature gave some protections to our pharmaceutical industry, which is an important industry in our state, but not complete immunity. The rebuttable presumption is just that, and in this case it is overcome by the evidence.

In the Kamie Kendall case, the Supreme Court granted certification solely on the issue of the statute of limitations. Kendall v. Hoffmann-La Roche Inc., 205 N.J. 99 (2010). The court found this presumption does play a role in the discovery analysis. The argument had not been raised by the defendant Hoffmann-La Roche at the trial level where a Lopez hearing was held, but was raised on appeal. The Supreme Court found “the presumption is not dispositive but may

be overcome by evidence that tends to disprove the presumed fact.” Kendall v. Hoffmann-La Roche, Inc., 209 N.J. 173, 180 (2012). Kendall was an Accutane case. The history of the warnings approved by the FDA is set forth in the decision. The question of when Andrew McCarrell knew enough to stop the tolling of the statute of limitations has been the subject of this court’s prior decision and the Appellate Division’s decision. There was clearly sufficient evidence to rebut the presumption. In the Kendall v. Hoffmann-La Roche, Inc. Appellate Division decision, which is not precedential but relevant because it involves the same drug and the same FDA warning, the court refers to the McCarrell decision as providing useful background. No. A-2633-08T3, 2010 N.J. Super. Unpub. LEXIS 1904, at \*30-32 (App. Div. August 5, 2010.) Obviously both Appellate panels found sufficient evidence to overcome a presumption that the manufacturer’s warnings were adequate enough to put the plaintiffs on notice of their causes of action. The decision that presumption does not bar recovery has already been decided by the Appellate Division.

The more extreme suggestion by the defendant is that the presumption in the PLA means the court should almost use an outcome determinative analysis and apply whatever state’s law bars the plaintiffs from succeeding in lawsuits against New Jersey companies. This idea is far removed from this court’s interpretation of the present status of the law, which requires a balancing of the interests of industry and consumers.

In Rowe v. Hoffmann-La Roche, Inc., the New Jersey Supreme Court had to decide whether to apply New Jersey law or Michigan law in a products case. 189 N.J. 615, 622-23 (2007). New Jersey has a law that is more protective of pharmaceutical companies than most other states. In the entire analysis it appears to have been focused on governmental interest, rather than significant relationship or contact analysis. That case involved the one state in the

United States where the legislature has decided that if a drug is FDA approved, then the drug can never be found defective or inadequately labeled, no matter how defective or inadequately labeled it is. See id. (citing Mich. Comp. Laws § 600.2946(5)) This is an extraordinarily strong law that is very beneficial to prescription drug manufacturers. It completely bars recovery under Michigan law for its own citizens who may have been injured by prescription drugs. The State of Michigan has put its complete trust in the adequacy of the FDA process, a position the FDA itself does not even take.

Faced with weighing the governmental interest in considering a recovery for a Michigan plaintiff, whose state would never permit him/her to recover against a New Jersey manufacturer or any manufacturer of an FDA approved drug, our Supreme Court decided that Michigan's strong unambiguous position on such claims overrode New Jersey's interests. Our courts and legislature obviously want to provide some extra protections to pharmaceutical companies for many public policy reasons. The reasoned analysis in Rowe was that, if prescription drug manufacturers should be completely immune from lawsuits arising out of prescription drug litigation and their citizens had no right to proceed against these manufacturers, New Jersey had no stronger government interest in giving Michigan residents a forum where they could do what they could never do in their own state. The laws being compared were not statute of limitations laws, but rather public policy laws based on the economic interests of the states. The Rowe decision is logical, but it is distinguishable from most other conflict of law cases where the contacts and the laws are more nuanced, as is the case here.

Here, the Supreme Court's decision in Gantes v. Kason Corp., is more applicable. 145 N.J. 478 (1996). Gantes did not deal with a decision on which products liability law would apply, but which statute of limitations law to apply. Id. at 484. New Jersey has a two year

statute of limitations and the claim was filed in New Jersey within two years of the Georgia plaintiff's death. The machine that allegedly caused the plaintiff's death was manufactured about thirteen years earlier in New Jersey. Id. at 481. Georgia had a ten year statute of repose which would bar the action in Georgia. Id. In Gantes, as in Rowe, a governmental interest test was applied. However, as the New Jersey Supreme Court has often done in the past, it held that "[w]hether the policy that underlies a state law gives rise to a governmental interest calling for the application of that state's law depends on the nature of the contacts that the state has to the litigation and to the parties." Id. at 487. (emphasis added).

In Gantes, the New Jersey Supreme Court indicated that "both the Appellate Division majority and the trial court found that the interest in deterrence would be outweighed by the possibility of unduly discouraging manufacturing in New Jersey if products liability actions were allowed in circumstances where they would be barred in the courts where the cause of action arose." Id. at 490 (citing Gantes on Behalf of Estate of Gonzalez v. Kason Corp., 278 N.J. Super. 473, 479 (App. Div. 1993)). The New Jersey Supreme Court found this rationale was not appropriate and reversed. It quoted Judge Pressler, who in her dissent at the Appellate level had eloquently commented on the leading role New Jersey played in the development of tort law in the area of product safety. Id. (citing Gantes v. Kason Corp., 276 N.J. Super. 586, 594 (App. Div. 1994)). The New Jersey Supreme Court found that New Jersey had a very strong interest in discouraging domestic manufacturers from making and selling unsafe products to the public. Id. at 491. The Supreme Court looked at the PLA that had just been passed by the legislature and found it did not impose a statute of repose or prescribe a limitation on the time period to bring a cause of action that was more favorable to manufacturers. Id. at 491-92. Clearly, the New Jersey legislature in drafting the PLA felt manufacturers should be held responsible for selling

defective prescription medications. Although it gave prescription drug manufacturers a “rebuttable presumption,” the legislature obviously chose to allow those injured by defective prescription drugs manufactured and labeled in New Jersey to be compensated. The Supreme Court decision cites to three reasons also recognized by Judge Pressler below why the New Jersey statute of limitations should apply so as not to bar the cause of action: (1) our jurisprudential commitment to the victims of defective products; (2) the recognition that the place where a product manufactured here ultimately comes to rest and causes injury is a matter of pure fortuity; and (3) the general deterrence of the manufacture of unsafe products and the ultimate public safety. Id. at 490-93 (internal quotations omitted). The last reason, the public safety, is very important in the overall scheme of tort law. The United States Supreme Court in Wyeth v. Levine, found that state tort law was not preempted by the federal regulations of brand name prescription drugs by the FDA. 555 U.S. 555, 581 (2009). There, Justice Stevens states the following:

The FDA has limited resources to monitor the 11,000 drugs on the market, and manufacturers have superior access to information about their drugs, especially in the postmarketing phase as new risks emerge. State tort suits uncover unknown drug hazards and provide incentives for drug manufacturers to disclose safety risks promptly. They also serve a distinct compensatory function that may motivate injured persons to come forward with information. Failure-to-warn actions, in particular, lend force to the FDCA's premise that manufacturers, not the FDA, bear primary responsibility for their drug labeling at all times. Thus, the FDA long maintained that state law offers an additional, and important, layer of consumer protection that complements FDA regulation.

[Id. at 578].

The New Jersey Supreme Court in Gantes and Judge Pressler clearly express the same strong reasons why our state has an interest in allowing consumers of our industries' products to pursue their actions. There is a substantial New Jersey interest in allowing even people from other states to pursue claims against products manufacturers, including pharmaceutical

manufacturers, in New Jersey. The Gantes and Rowe decisions are both good law and both carefully weighed New Jersey interests in the litigation against the other state's interests. As in Gantes, the relationship/contacts issue that goes to the question of when a suit can be brought must focus on the contacts that are important to the issue and how the law of each state impacts on those contacts. The presumption as it applies to the statutes of limitations gives the defendant more protection than in most states, but the protection afforded under the PLA only applies after New Jersey law is chosen to apply. It is not directly connected to the choice of which state law applies when Alabama does not have a discovery rule at all. It may have some indirect impact because it shows that the New Jersey legislature does have an interest in providing a layer of protection to the pharmaceutical industry, but the legislature as the Gantes decision points out did not impose any stricter time limit than already existed which was two years from when you discover facts that could possibly lead to a cause of action. The plaintiff was injured in Alabama and did take the product there. He lives there now and gets medical treatment there, but the contact with New Jersey is that the product that the jury found was defective, was manufactured and labeled here. The wrongful conduct was centered here. All the public safety issues discussed in Wyeth v. Levine and Gantes apply to this case.

Unlike Rowe, the State of Alabama does not hold that its citizens should not be compensated if injured by a defective product. Alabama simply applies the statute of limitations as written by their legislature without a history of a discovery rule being applied. The purpose behind Alabama's law is primarily to avoid stale claims. The Court in Gantes found this to be an unimportant concern compared to New Jersey contacts with the product and New Jersey's past interest in the safety of the public.

The last argument to be discussed is that out-of-state plaintiffs, like Andrew McCarrell, burden our court system and are forum shopping. In fact, it is not forum shopping to file a case in the state of the defendant who manufactured the product in the forum state. Under basic rules of jurisdiction, a plaintiff should be able to choose to sue a defendant where the defendant resides. The burden of multiple lawsuits against a defendant has been addressed by the New Jersey Supreme Court. New Jersey has for many years created special litigation tracks for this type of litigation. Economically, it is not usually feasible for a single plaintiff to pursue a single case through the discovery process and a trial that will cost millions of dollars for each side. It is not beneficial to the plaintiff or the defendant to pursue litigation in fifty states. This is why the federal system has taken cases like this one from states all over the country and assigned them to one judge for management before a multi district litigation judge in one district. This is why those plaintiffs who want to pursue their actions in state courts file them in a state where they can be placed in a system designed to accommodate large numbers of cases. Since the cases are segregated from other types of civil cases, they have separate management that prevents them from unduly impacting other civil litigations. This is done at the federal level and in some states, such as New Jersey, where the number of manufacturers often make it an appropriate jurisdiction to file suit.

The cost to the court system and state is not known. However, considering that there are three judges in the state handling all this litigation and considering the fact that every case filed generates filing fees, substantial motions fees, and the fees for admission of hundreds of attorneys *pro hac vice* who, in addition to the original motion fees, pay into our now substantial Client Protection Fund every year, it is very possible that State of New Jersey generates more money than it expends on this type of litigation. Unless an analysis is done, the question of how

much, if at all, of an economic burden this type of litigation is on the state cannot be factored into the choice of law analysis.

For all the reasons set forth above, this court finds that the New Jersey discovery rule was properly applied; that it is too late to argue a change in the law that happened before oral argument and prior to the prior Appellate decision; that if Restatement (Second) factors are applied, the choice of law should still be New Jersey; and that the presumption of adequacy under the PLA, when applied to the facts of McCarrell, is overcome by the evidence.

#### Remittitur

This court has already addressed this issue in the prior MOD on this motion for a new trial, but it is the single issue that is the most difficult from my perspective. If I were a juror, twenty-five million dollars is much more than I would have awarded Andrew McCarrell, while two and a half million is less than I would have given him. As I stated in my prior decision, however, this is not the test. Although surprised, I was not shocked by the verdict. I did not find a sense of wrongness to it. It was high, but not wrong.

When a jury is given the charge on damages in New Jersey, they are told they have no better guide than their own conscience. They are told they know the value of money and they know the nature of pain and suffering and that the task of equating the two requires a high form of human judgment. The "value of money" in our society is something the jurors are told to consider. Twenty years ago, smaller amounts of money meant a lot more than they do today. Not only are athletes and entertainers paid huge sums, but the stories of a CEO of a hospital making millions of dollars a year or a hundred million dollar bonus buyout of a college president are all too common. Each million has less value than it once did especially when the price of a single home can easily exceed ten million dollars.

The second part of the jury instruction is that the jurors know the nature of pain and suffering. If you are not blind or deaf or unable to walk, it is hard to imagine how one who has these disabilities feels. They may have no physical pain, but the quality of their life is certainly changed from one who can see or hear or walk. Jurors must place a value on this without experiencing it. However, every juror from Andrew McCarrell's case probably has more than once in their lifetime had severe cramping pain, diarrhea, and the fatigue and emotional drain of staying in or near the bathroom for hour after hour. For most people, this lasts for a day or a few days at the most. In this case, the jury could have found from the evidence presented that Andrew McCarrell, a young person with a family to support, lives much of his life in this situation and his condition is not likely to improve.

It is hard to convey the "feel of the case" to an Appellate Court, and this court recognizes that it would be easier for the Appellate Division if this court reduced the verdict from twenty-five million dollars to a more comfortable verdict. The Supreme Court has stated:

The power of remittitur therefore is limited, because its purpose is not to bring a generous, but manifestly supportable, verdict down into a range more to the liking of the trial or appellate court. Instead, it is a device to which a court may resort to reduce a verdict that is "shocking" and award in its place "the highest figure that could be supported by the evidence."

[Ming Yu He. v. Miller, 207 N.J. 230, 263 (2011) (citing Fertile v. St. Michael's Med. Ctr., 169 N.J. 481, 500 (2001))].

Other plaintiffs with inflammatory bowel disease in the same litigation have received awards of nine million dollars and ten million dollars.<sup>1</sup> Since Andrew McCarrell's verdict should be higher

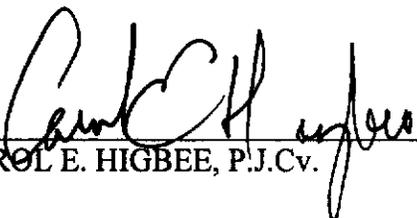
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<sup>1</sup> Plaintiff Verdicts: Andrew McCarrell (#1) \$2.5 million + \$119,000.00; Andrew McCarrell (#2) \$25 million + \$159,530.19; Kamie Kendall \$10.5 million + 78,500.00; Jordan Speisman \$8.5 million + \$142,500.00 (Verdict vacated by App. Div.); Lance Sager \$2.5 million + \$125,000.00 (Verdict vacated by App. Div.); Kelly Mace \$1.5 million + \$128,000.00 (\*Verdict vacated by App. Div.); James Marshall No Cause; Kelley Andrews No Cause; Gillian Gaghan \$2 million + \$125,617.00; Priya Tanna Mistrial; Rebecca Reynolds No Cause; Jason Young No Cause; Riley Wilkinson \$9 million; Kathleen Rossitto \$9 million.

than these awards because of the evidence presented in his case, this court has struggled with whether to enter a remittitur to fifteen million dollars or to keep the verdict at the twenty-five million dollars that the jury found was appropriate.

This court finds the jury's decision should stand. A verdict of fifteen million would have made it easier, but this court finds that twenty-five million dollars, while very high, is right at the top of a range that is within reason and will not disturb it.

Plaintiff shall submit the appropriate Order and a Final Judgment.

  
CAROL E. HIGBEE, P.J. Cv.

XXXX Order is attached.