

13-0934

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

CORA PHILLIPS HAIRSTON, *et al.*,

Plaintiffs,

v.

GENERAL PIPELINE CONST., INC., *et al.*,

Defendants.

Civil Action No. 06-C-238
Consolidated with Civil Action
Nos. 06-C-239, 06-C-240,
06-C-241 & 07-C-234
Justice Elliott E. Maynard

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ORDER DENYING THE DEFENDANTS' POST TRIAL MOTIONS

On February 25, 2013, came the parties, by their respective counsel, for a hearing on the "*Motion of General Pipeline Construction, Inc., for Judgment as a Matter of Law or, in the Alternative, for New Trial for Remittitur and Memorandum of Law in Support Thereof*" and "*Equitable Production Company's Motion for a New Trial.*"

WHEREUPON, the Court, after reviewing the pleadings and hearing the arguments of counsel, makes the following findings of fact and conclusions of law:

1 With respect to Defendant General Pipeline Construction, Inc.'s (hereinafter "General Pipeline") Motion, it argued the following assignments of error:

a. That it was error for the Court to instruct the jury as to both a common law claim of desecration pursuant to case law and a statutory claim of desecration arising under West Virginia Code 29-1-8a;

b. That it was error for the Court to allow a witness to testify as to meaning, application and requirements of the law, that being a subject within the sole province of the Court;

c. That it was error for the Court to allow expert witnesses to testify outside the scope of their expertise;

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d. That it was error for the Court to allow parol evidence testimony as to the meaning of a lease contract;

e. That it was error for the Court to allow the case to go to the jury without admissible evidence having been presented proving or tending to prove the elements of a common law cause of action for desecration as identified in the case law of this State;

f. That it was error for the Court to improperly instruct the jury as to *prima facie* negligence;

g. That it was error for the Court to improperly instruct the jury as to spoliation;

h. That it was error for the Court to allow deceased Plaintiffs Louella Wilder and Ulysses Olbert, as the heirs of deceased descendants of persons interred at this location, to participate as Plaintiffs;

i. That the cumulative errors of the Court committed during the trial, both before the jury and otherwise, render the Jury Verdict and the entry of judgment against the Defendants unsupportable;

j. That it was error for the Court to allow the jury to return a verdict for emotional distress as to any Plaintiff without any indication that the jury also found that there had been desecration of the physical area of the gravesite or the common areas, if any, of the cemetery;

k. That it was error for the Court to accept the jury's verdict which, in awarding an exactly equal amount to each Plaintiff, was obviously the result of sympathy or bias;
and

1. That it was error for the Court to deny the motions and objections made by Defendants during the pre-trial proceedings and during the course of the trial or to commit the errors which are otherwise apparent on the record.

2. With respect to Defendant Equitable Production Company's (hereinafter "Equitable") Motion, it argued the following assignments of error:

a. That the jury was improperly instructed as to *prima facie* negligence:

1). West Virginia Code §29-1-8a did not apply to Plaintiffs' common law cause of action for grave desecration; and

2). The Court erred in its application of West Virginia Code §61-8-14.

b. That the Court improperly gave an adverse inference instruction for spoliation;

c. That the Court erred in instructing the jury on constructive knowledge of corporate employee;

d. That the Court erred in failing to give any punitive damages instruction during the liability phase of trial;

e. That the Court erred in failing to instruct the jury that the requirements set out in the Federal Energy Regulatory Commission Regulations and the Natural Gas Act did not apply;

f. That the Court erred in admitting irrelevant examination of witnesses pertaining to West Virginia Code §29-1-8a;

g. That the Court erred in admitting irrelevant evidence pertaining to Equitable's supervision of the pipeline construction;

h. That the Court erred in permitting Plaintiffs' expert archeologist to testify on matters outside the scope of his expertise;

i. That the Court impermissibly allowed the recall of Plaintiffs' expert witness;

j. That the Court erred in denying Equitable's Motion for Judgment as a Matter of Law on Plaintiffs' claims for punitive damages;

k. That the Court committed cumulative error relating to the admission of irrelevant evidence;

l. That the Court committed cumulative error relating to the admission of speculative evidence;

m. That the Court committed cumulative error relating to comments by the Court on the evidence presented; and

n. That the Court committed cumulative error relating to the admission of cumulative hearsay evidence.

3. A new trial should not be granted unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done. *See State ex rel. Meadows v. Stephens*, 207 W.Va. 341, 532 S.E.2d 59 (2000); *See also Morrison v. Sharma*, 200 W.Va. 192, 488 S.E.2d 467 (1997). Generally, a non-prejudicial error at trial cannot form the basis for granting a new trial. *See Witt v. Sleeth*, 198 W.Va. 398, 481 S.E.2d 189 (1996). The power to grant a new trial should be used with care and a circuit court rarely should grant a new trial. *See Rodriguez v. Consolidation Coal Co.*, 206 W.Va. 317, 524 S.E.2d 672 (1999); *See also Sayre v. Roop*, 205 W.Va. 193, 517 S.E.2d 290 (1999); *See also Gum v. Dudley*, 202 W.Va. 477, 505 S.E.2d 391 (1997).

4. A Motion to alter or amend a Judgment should be granted where there is an intervening change in controlling law, where new evidence not previously available comes to light, where it becomes necessary to remedy a clear error of law or to prevent obvious injustice. *See Acord v. Colane Co.*, 228 W.Va. 291, 719 S.E.2d 761 (2011).

5. Where liability is clearly established and the jury has made an erroneous over-calculation of damages, the Court may direct a remittitur. *See Wilt v. Buracker*, Syl. Pt. 10, 443 S.E.2d 196, 191 W.Va. 39 (1994). If the plaintiff declines to accept the remittitur, then a new trial will be ordered solely on the issue of damages. *See Id.*

6. In ruling on General Pipeline's Motion, the Court finds as follows:

a. There was no error in the Court instructing the jury as to both a common law claim of desecration pursuant to case law and a statutory claim of desecration arising under West Virginia Code §29-1-8a.

b. There was no error in the Court allowing expert witness testimony.

c. There was no error in the Court allowing the testimony of the expert witnesses and such testimony was within the proper scope.

d. There was no error in the Court allowing expert evidence about the meaning of the lease contract.

e. There was no error in the Court allowing the jury to consider the common law cause of action for desecration.

f. There was no error in the Court instructing the jury as to *prima facie* negligence.

g. There was no error in the Court instructing the jury on spoliation of evidence.

h. There was no error in the Court allowing the claims of deceased Plaintiffs Louella Wilder and Ulysses Olbert to proceed to the jury.

i. There were no cumulative errors which would make the verdict unsupportable against General Pipeline.

j. There was no error in the Court allowing the jury to return a verdict for each Plaintiff for emotional distress.

k. There was no error in the Court accepting the jury's verdict which awarded equal amounts to each Plaintiff.

l. There was no error in the Court denying the Motions and objections of General Pipeline during the pre-trial proceedings and during the course of trial.

7. In ruling on Equitable's Motion, the Court finds as follows:

a. There were no errors in the Court's jury instruction on the issue of *prima facie* negligence because West Virginia Code §29-1-8a and §61-8-14 were applicable to this case:

1). There was no error in the Court's application of West Virginia Code §29-1-8a.

2). There was no error in the Court's application of West Virginia Code §61-8-14.

b. There was no error in the Court's adverse inference instruction for spoliation.

c. There was no error in the Court's jury instruction on constructive knowledge of corporate employees.

d. There was no error in the Court's refusal to give any punitive damage instructions during the liability phase of the trial.

e. There was no error in the Court's refusal to give instructions regarding the Federal Energy Regulatory Commission Regulations and the National Gas Act.

f. There were no errors in the witnesses examinations in regard to West Virginia Code §29-1-8a.

g. There were no errors in admitting evidence pertaining to Equitable's supervision of the pipeline construction.

h. There were no errors in the Court allowing the testimony of expert archeologist William Updike.

i. There were no errors in the Court allowing the recall testimony of expert Marc Lazenby.

j. There were no errors in the Court allowing Plaintiffs' claims for punitive damages against Equitable.

k. There were no cumulative errors as there was no admission of irrelevant evidence.

l. There were no cumulative errors as there was no admission of speculative evidence.

m. There were no cumulative errors as there were no errors relating to the Court's comments.

n. There was no admission of cumulative hearsay evidence.

8. Based upon the foregoing, the Court stands by its previous rulings and finds the arguments raised by General Pipeline and Equitable, in their respective Motions, failed to establish that General Pipeline was entitled to a remittitur, that prejudicial error crept into the

record or that substantial justice was not done. As such, General Pipeline and Equitable failed to establish that they are entitled to a new trial or any other such relief.

WHEREFORE, the Court is of the opinion to and hereby does **DENY** the "*Motion of General Pipeline Construction, Inc., for Judgment as a Matter of Law or, in the Alternative, for New Trial for Remittitur and Memorandum of Law in Support Thereof*" and "*Equitable Production Company's Motion for a New Trial.*"

Pursuant to the provisions of Rule 54(b) of the West Virginia Rules of Civil Procedure, this Court expressly finds there is no just reason for delay of the appeal of the judgment entered in this matter in favor of the Plaintiffs and against the Defendants and, accordingly, it is **ORDERED** that the Judgment Order entered herein dated November 20, 2012, is, and shall be deemed for all purposes, a final judgment as to all claims presented in this consolidated civil action except as to (1) the third-party claim of General Pipeline against Mountain State Insurance Company and (2) the third-party claim of Equitable against National Fire and Marine Insurance Company.

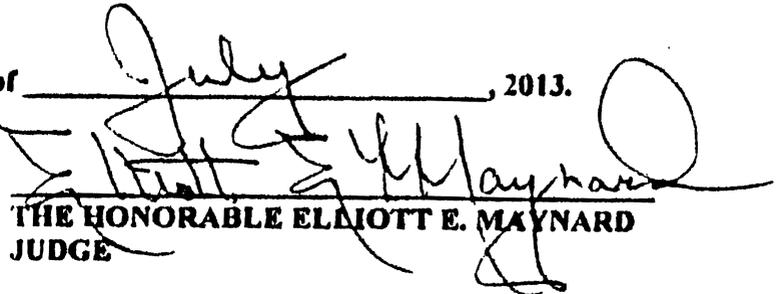
The Third-Party Complaints pending herein are stayed until the further Order of this Court.

Furthermore, the Court hereby is of the opinion to and hereby **GRANTS** General Pipeline's Motion to stay execution of Judgment waiving any requirement for the posting of bond pending the appeal of this matter until the further Order of this Court.

The objections of all parties aggrieved by the entry of this Order hereby are preserved and noted for the record.

The Clerk of this Court is **ORDERED** and **DIRECTED** to send certified copies of this Order to all counsel of record.

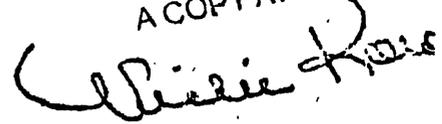
ENTERED: This the 26th day of July, 2013.


THE HONORABLE ELLIOTT E. MAYNARD
JUDGE

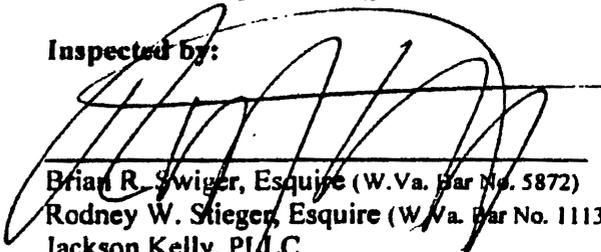
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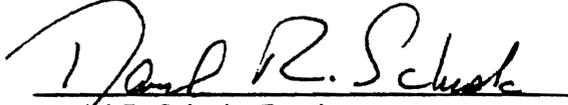
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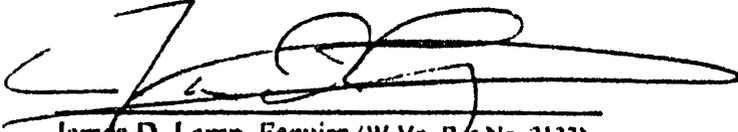


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CERTIFICATE OF SERVICE

I, Rodney W. Stieger, counsel for defendant Equitable Production Company, do hereby certify that on August 28, 2013 service of the foregoing *Notice of Appeal* was made upon counsel of record by causing a true and exact copy to be placed in the United States mail, postage prepaid, addressed as follows:

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I further certify that I have mailed a true and correct copy of same to the Honorable Elliot E. Maynard by U.S. mail and via electronic mail, addressed as follows:

Honorable Elliot E. Maynard
Post Office Box 26
Charleston, West Virginia 25321
mailspike@yahoo.com

I further certify that I have mailed a true and correct copy of the same to Vickie "Vance" Kolota, Logan County Circuit Clerk, by U.S. mail, addressed as follows:

Vickie "Vance" Kolota
Clerk, Circuit Court of Logan County
300 Straton Street Room 311
Logan, WV 25601

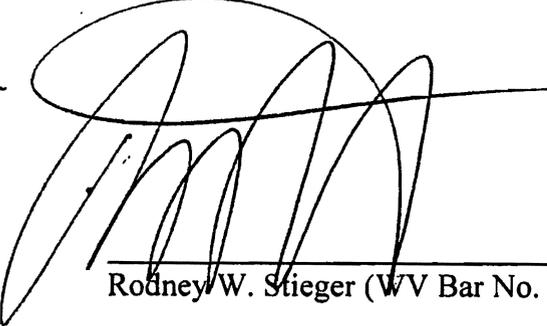
I further certify that I have mailed a true and correct copy of the same to the

following:

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Logan, West Virginia 25601

Sherry M. Lawson, Court Reporter
4904 Boxwood Drive
Charleston, West Virginia 25306

Wendy M. Thomas, Court Reporter
191 Blue Lick Road
Winfield, West Virginia 25213



A handwritten signature in black ink, appearing to read 'R. Stieger', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Rodney W. Stieger (WV Bar No. 11139)