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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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FLYNN, J., dissenting. I respectfully disagree with the majority as to its conclusion concerning noneconomic damages. I would reverse the judgment denying the motion to set aside the verdict and would order a new trial as to damages.

In my opinion, it is important to state at the outset what this case is not about. First, it is not a compromise general verdict. A general verdict was not rendered. Cf. *Stone* v. *Bastarache*, 188 Conn. 201, 204, 449 A.2d 142 (1982). The jury rendered special verdicts, as it was required to do by General Statutes § 52-225d, as to both economic and noneconomic damages. From these special verdicts, we are able to test whether each verdict was consistent with the particular circumstances before it.

Second, the infirmities concerning the verdict are unrelated to whether the impact between the vehicles of the plaintiff and the defendants was slight or not. Slight or not, we know from the special verdict rendered on economic damages that the jury found that the collision in which the defendants' vehicle struck that of the plaintiff caused the plaintiff pain and injury for which the jury awarded damages incurred for treatment. That was all that the plaintiff was required to prove to establish the right to at least nominal damages for the suffering of that pain, whatever the degree of the severity of the impact.

Third, the fact that the jury did not award all of the economic damages claimed should also not make a difference, if in awarding the part it did allow it necessarily had to find that the defendants' negligence caused noneconomic damages, namely pain and suffering.

Fourth, while there were some items of noneconomic damages which the jury reasonably could have found not proved, that should not make a difference in determining what should be done about the jury's failure to award noneconomic damages for enduring pain, which it necessarily did find proved.

I now turn to those principles of law and facts that do make a difference in this case. In *Wichers* v. *Hatch*, 252 Conn. 174, 188–89, 745 A.2d 789 (2000), our Supreme Court held that a jury is not required to award noneconomic damages *merely* because it has awarded economic damages. *Wichers* did not hold that if an award of a particular item of damages, in light of the evidence and the instructions given, necessarily means that the jury found that the plaintiff also suffered noneconomic damages, the jury was somehow free to award nothing for the noneconomic damages it found proved. See also *Schroeder* v. *Triangulum Associates*, 259 Conn. 325, 333, 789 A.2d 459 (2002) ("jury reasonably could not

have initially found the defendant liable for the expense of the surgery but not responsible for any pain or disability attendant to such surgery''). To the contrary, *Wichers* held that ''the jury's decision to award economic damages and zero noneconomic damages is best tested in light of the circumstances of the particular case before it.'' *Wichers* v. *Hatch*, supra, 188. In my opinion, under the circumstances in this case, an award of at least part of the total of economic damages claimed for the treatment of pain means necessarily that the defendants caused pain that needed to be treated and would not have occurred but for some negligent act of the defendants.[1] It is unjust not to award noneconomic damages for the pain and suffering the plaintiff endured when the jury first determined that the plaintiff had proved an injury that the defendants caused resulted in economic damages for the treatment of that pain.

We know that the jury awarded at least $372.85[2] of the amount claimed for the chiropractic treatment of pain. There was a special verdict here in which the jury was required to set out the total sum of economic damages it found proved for a chiropractic bill and other medical expenses. It awarded $2000 in economic damages. If we assume that the jury awarded all of the other nonchiropractic medical expenses without diminution, we necessarily must conclude that it still included at least $372.85 toward chiropractic bills, which were incurred for the treatment of pain. The jury could not, therefore, reasonably have found that the plaintiff had failed in her proof on this issue. It awarded a part of the bill of a chiropractor who was engaged to treat pain. We, therefore, do not have the kind of ''mere award'' of economic damages that *Wichers* found did not mandate a noneconomic award. Instead, we have a verdict whereby in awarding some damages for chiropractic pain treatment, the jury necessarily found that the defendants caused pain. The jury had been charged to award fair compensation for any pain caused to the plaintiff by the defendants. Enduring pain and suffering from an injury, where it is caused by the defendants' negligence, is compensable. An award that includes nothing for such an item of noneconomic damage, which the jury found that the defendants caused, is manifestly unjust and should not stand. Such an unjust result cannot be justified on principles of finality or expediency.

I respectfully dissent.

[1] I note from my review of the medical bills and reports in evidence that the plaintiff consulted the chiropractic offices of Steven D. Grob because of pain and stiffness in the cervical spine and low back. He treated her for that pain by spinal manipulation and adjustment, hot and cold packs, electrical stimulation, therapeutic exercise and other similar methods.

Any argument that, despite the substantial evidence to the contrary, the jury could have discredited the evidence of pain treatment by the chiropractor and only credited the evidence concerning chiropractic treatment of the injury itself does not make this verdict more logical, consistent or supportable because the plaintiff was still entitled to noneconomic damages for the infliction of the injury itself. The bodily injury itself is an item of noneconomic

damages. Although a jury is not obligated to believe that every injury causes pain, it may not disregard an obvious injury. *Vajda* v. *Tusla*, 214 Conn. 523, 538, 572 A.2d 998 (1990). Nor is it logical to award damages for the treatment of an injury and award no noneconomic damages for sustaining it.

[2] Taking the $2000 jury award and deducting the total nonchiropractic medical expenses of $1627.15, which is comprised of $1239 for services rendered by Robert Shaw, a physician, $257.15 for services rendered by Lawrence & Memorial Hospital, and $121 for services rendered by Ocean Radiology Associates, leaves a balance of $372.85.