IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

HOSPITALITY PARTNERS, LLC,	:	
	:	
Plaintiff	:	
	:	Case No. 330056-V
	:	(consolidated with 330829-V)
	:	
BREWMASTERS HOTEL, LLC, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

On July 20, 2011, following a jury trial in this hotel management agreement case, a verdict was returned in favor of the plaintiff, Hospitality Partners, LLC ("Hospitality Partners"), in the amount of $2,880,801. On August 8, 2011, defendants Brewmasters Hotel, LLC ("Brewmasters") and C. Eugene Singleton, now represented by separate counsel,[1] filed motions under Maryland Rule 2-533 and 2-535 for a new trial, for revision of the judgment and, in the alternative, for remittitur. Hospitality Partners filed its opposition to these motions on August 25, 2011. On August 30, 2011, this court held a hearing on all pending motions. The defendants have raised a plethora of issues, only some of which merit any discussion. For the reasons set forth below, all of the defendants' motions will be denied.

I.

The decision to grant or deny a new trial under Maryland Rule 2-533 "is within the sound discretion of the trial court and is not reversible on appeal, at least when the trial court fairly exercised its discretion, and except for the most compelling reasons."

[1] At trial, Brewmasters and Mr. Singleton were represented by the same law firm. Presumably due to the jury's finding on the derivative claim each defendant is now represented by new, separate counsel.

Mack Trucks, Inc. v. Webber, 29 Md. App. 256, 270 (1975). The circuit court has broad, albeit not unlimited, discretion to grant a new trial, on some or all of the issues, if warranted by the facts and circumstances of the case. *Buck v. Cam's Broadloom Rugs, Inc*., 328 Md. 51, 57–59 (1992); *Butkiewicz v. State*, 127 Md. App. 412, 421–22 (1999). Specifically, trial courts are vested with discretion to grant a new trial if the court concludes that the verdict was excessive or the result of some improper influence. *Banegura v. Taylor*, 312 Md. 609, 624 (1988); *Conklin v. Schillinger*, 255 Md. 50, 68–70 (1969). If the court determines that a verdict is excessive, it may grant a new trial conditioned upon the plaintiff's acceptance of remittitur, as long as that decision is not itself an abuse of discretion. *Hebron v. Whitelock*, 166 Md. App. 619, 635-43 (2006); *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 78–81 (2003). If an excessive verdict results from passion or prejudice or improper legal rulings by the court during the trial, a new trial may be granted on the issue of liability, as well as damages. *See Tierco v. Williams*, 381 Md. 378, 413–14 (2004); *Korotki v. Goughan*, 597 F. Supp. 1365, 1386 (D. Md. 1984). Finally, a new trial may be granted if the trial court is convinced that the verdict is against the weight of the evidence. *Buck*, 328 Md. at 60; *Thodos v. Bland*, 75 Md. App. 700, 708, *cert. denied*. 313 Md. 689 (1998).

"On a motion to revise a judgment [under Rule 2-535] on the verdict of a jury, the court's power to revise the judgment is no greater than the power it had to grant a judgment notwithstanding the verdict or a new trial under Rules 2-532 and 2-533. Any other result would invade the fact finding of the jury." P. Niemeyer & L. Schuett, *Maryland Rules Commentary* 460 (3d ed. 2003). The Court of Special Appeals has held that Rule 2-535 applies to the circuit court's revisory power after a jury trial, despite

language by the Court of Appeals to the contrary. *Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 80 n.4 (2007). *Cf. Allstate Ins. Co. v Miller*, 315 Md. 182, 189 (1989) (Rule 2-535(a) is the proper vehicle to revise a judgment asserted to be in excess of policy limits). This court is bound to follow the holding of the Court of Special Appeals in *Kleban* and will do so in this case.

II.

The focus of the defendants' post-trial arguments is their contention that, regardless of why or how Brewmasters terminated the hotel management agreement with Hospitality Partners, and regardless of the jury's factual findings on issues related to that termination, recoverable damages are capped by the amount to which Hospitality Partners would be entitled had Brewmasters terminated the contract under the no-cause provision of Section 21.03. According to the defendants, this result is mandated by the decisions of the Court of Special Appeals in *Cottman v. Maryland Dep't. of Natural Res.*, 51 Md. App. 380 (1982) and *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50 (2006), *aff'd on other grounds*, 397 Md. 37 (2007).

The defendants make this argument even though Brewmasters purported to terminate the hotel management contract on March 31, 2010, under a different provision of the agreement, namely Section 21.01(f), which allows Brewmasters to terminate the agreement for cause in the event of gross negligence by Hospitality Partners in the operation of the hotel, the performance of the contract, or the furnishing of reports required under the contract. The defendants' position at trial was consistent with the position set forth in the termination notice—that the plaintiff was grossly negligent in the performance of its obligations under the hotel management agreement.

Hospitality Partners disagrees that its damages are limited to those provided in Section 21.03, which requires the payment of a defined termination fee in the event of a "no cause" termination and the giving of six months prior notice of any such termination. Among other reasons, the plaintiff contends that the defendants cannot claim the benefit of a contract provision, the terms of which they did not comply and on whose basis they did not actually terminate the contract. Hospitality Partners argues that the "no cause" provision was a specifically bargained for exchange of promises, the application of which requires substantial, if not strict, compliance with its provisions. In its view, Brewmasters' use of Section 21.03 has two express conditions precedent, first, the giving of six months *prior notice* before terminating the contract and, second, the *paying* of the termination fee, as calculated according to the formula set out in the contract. Brewmasters did neither in this case. According to Hospitality Partners, therefore, Brewmasters has not satisfied the express conditions precedent for a "no cause" termination of a contract which has a ten-year term. *See* Section 5.01 (providing that the initial term of the agreement is ten years "*unless sooner terminated in accordance with the terms of this Agreement"*). (Emphasis added). Since Brewmasters did not terminate the contract in accordance with the terms of the agreement, Hospitality Partners contends that damages may be calculated under the full term of the contract. As a result, the plaintiff argues, Brewmasters' defective termination for cause, as found by the jury, amounts to a material breach of the contract and allowed the jury to award damages for the full contract term.

"Damages for breach of a contract ordinarily are that sum which would place the plaintiff in as good a position as that in which the plaintiff would have been, had the

contract been performed." *Beard v. S/E Joint Venture*, 321 Md. 126, 133 (1990). Generally, damages are measured from the date of the breach, *Republic Ins. Co. v. Prince George's Cnty.*, 92 Md. App. 528, 533 (1992), must be proven with reasonable certainty and may not be based on speculation or conjecture. *Roebuck v. Steuart*, 76 Md. App. 289, 314 (1988).

To recover lost profits in this context, a plaintiff must establish three elements: (1) that the defendant's breach caused the loss; (2) that, at the time the contract was executed, the defendant reasonably could have foreseen that his breach would result in lost profits by the plaintiff; and (3) lost profits are proven with reasonable certainty. *See, e.g., M & R Contractors & Builders, Inc. v. Michael*, 215 Md. 340, 345-46 (1958); *John D. Copanos & Sons v. McDade Rigging & Steel Erection Co., Inc.*, 43 Md. App. 204, 206 (1979); *Della Rata, Inc. v. Am. Better Cmty. Developers, Inc.*, 38 Md. App. 119, 138 (1977).

In *M & R Contractors*, the Court of Appeals held that certainty in the context of lost profits means reasonable certainty. *M & R Contractors*, 215 Md. at 345-46. The following principles were adopted: "(a) if the fact of damage is proven with certainty, the extent or amount of therefore may be left to reasonable inference; (b) where a defendant's wrong has caused the difficulty of proving damage, he cannot complain of the resulting uncertainty; (c) mere difficulty in ascertaining the amount of damage is not fatal; (d) mathematical precision in fixing the amount of damage is not required; (e) it is sufficient if the best evidence of the damage which is available is produced; and (f) the plaintiff is entitled to recover the value of his contract as measured by the value of his profits." *Id.* at 348-49.

Neither Brewmasters nor Singleton seriously contend that the plaintiff did not satisfy the above-referenced standards. To the contrary, as the jury found, the plaintiff did satisfy these standards by admissible fact and expert testimony. Instead, the defendants' focus is on the more general notion that Hospitality Partners' expectation interest was limited to "six months" damages since the contract *could* have been terminated by Brewmasters for any reason, or no reason, on six months notice. For this proposition, the defendants rely principally on *Cottman* and *Storetrax*. Both cases are distinguishable from the present case.

In *Cottman,* the plaintiff had leased 190 acres of land from the State of Maryland. The initial lease term was one year and the lease provided that, upon the expiration of the initial term, it would continue in effect from month-to month and then "may be terminated upon thirty (30) days written notice by either party." 51 Md. App. at 381. After the initial one-year lease term had expired, and without notifying the plaintiff that it was terminating the month-to-month tenancy, the State invited public bids to re-lease the 190 acres. After a new lease was awarded to a third party, the plaintiff brought suit for breach of lease. The Court of Special Appeals affirmed the trial court's holding that, although the State had breached the lease by failing to give 30 days notice to terminate the month-to-month tenancy, damages in that context were limited to the 30-day notice period. 51 Md. App. at 382-84.

Storetrax is factually similar to *Cottman* and likewise is not controlling. In *Storetrax,* the employment contract at issue was terminable by the employer "*with or without cause*" upon the giving of 10 days written notice. 168 Md. App. at 58. (Emphasis added). The amount of severance then due to the terminated employee

depended upon whether the termination was with cause or without cause. *Id*. Although summary judgment in favor of the employee was reversed because there was a factual dispute as to whether he had been terminated with or without cause, the holding by the Court of Special Appeals was limited to the following statement: "[E]ven if Storetrax breached the Agreement by not providing written notice, so long as it terminated him for 'cause' under any of the provisions of [the Agreement that defined cause] Gurland's damages for that breach would be limited to his salary for the duration of the notice period." 168 Md. App. at 72. The employer's right to terminate the employee was not in issue, and the Court of Special Appeals did not address whether, having elected to terminate a contract for one reason, the terminating party could then cap the non-breaching party's damages by asserting another reason at trial.

The court disagrees with the defendants' contention that damages in this case are limited to those that would have been due had Brewmasters followed Section 21.03—which it did not—by giving six months prior written notice and by paying the required termination fee. Brewmasters did neither in this case, and the trial testimony is clear that it never intended to fulfill either condition of Section 21.03.

Further, the hotel management agreement in this case bears little resemblance to the contracts at issue in *Cottman* or *Storetrax*, or the out-of state cases relied on by the defendants. *See, e.g., Osborn v. Comanche Cattle, Indus., Inc*., 545 P.2d 827, 831-32 (Okla. App. 1975); *Buckley v. Coe*, 385 S.W.2d 354, 358-59 (Mo. App. 1964). None of the cases relied upon by the defendants address the specific question presented here: whether a defective for-cause termination, invoking one provision of a contract, may be treated for damages purposes by the breaching party as if it were a without-cause

termination, under a separate contractual provision, and use that provision as a damages cap. Moreover, simply framing the issue in terms of the parties' reasonable expectations as of the time of contracting, *see Cottman*, 51 Md. App. at 383-84, does not really answer the question in this case. It is not self-evident that, at the time of contracting, the parties reasonably expected that an unfounded for-cause termination would be deemed by a court to include, as a matter of law, the invocation of a termination of the without-cause provision (including that provisions' damages cap). *See Clancy v. King*, 405 Md. 541, 557 (2008) (in construing a contract, effect must be given to each clause and no portion may be disregarded). Brewmasters' position is not persuasive because the parties could have, *but did not*, include in the contract language converting a defective for-cause termination into a termination for no cause with a concomitant damages limitation. *See K. Asamoah-Boadu v. Missouri*, 328 S.W.3d 790, 796-98 (Mo. App. 2010) (Ahuja, J., concurring). The court will not add contractual language, which the parties could have, but did not, include in their agreement.

The hotel management agreement in this case is a detailed, complex set of interlocking promises and promised benefits, and the plain language of the contract augers against the result sought by Brewmasters. The parties were undertaking a complex economic endeavor and entered into the transaction with the bargained-for-expectation that, absent strict or substantial good faith compliance with the express provisions for terminating the agreement, the contract would continue for a term of ten years. The plain language of the contract could not be clearer. *See* Section 5.01 (The initial term is 10 years "*unless terminated sooner in accordance with the terms of this Agreement*."); Section 5.04 ("Operating Term, as used in this Agreement, means and

includes the initial ten (10) years as defined in Section 5.01, plus any renewals or extensions provided herein or otherwise agreed upon by the parties hereto, *unless such term is otherwise terminated as provided for in this Agreement*."). (Emphasis added).

There were many ways and means to terminate the agreement, depending on various circumstances, contingencies and events, *see* Section 21.01,[2] which underscores the notion that the parties intended actual, or at least substantial, good faith compliance with the termination provisions they wrote, and that they carefully thought through and agreed upon how, when, and under what conditions the contract lawfully could be brought to an end earlier than ten years. *See Questar v. CB Flooring*, 410 Md. 241, 281-84 (2010); *see also Bramble v. Thomas*, 396 Md. 443, 460-65 (2007). It defies economic sense and ignores business realities simply to say that that this complex, 23 page hotel management agreement is, in essence, just a contract terminable at will and that the maximum damages available to the non-breaching party, regardless of the reason for a breach, is six months worth of damages. But that is the upshot of Brewmasters' contention; it could fire Hospitality Partners for one reason and cap its damages by invoking another.

The court sees it quite differently. Brewmasters' position is inconsistent with the plain language of the contract and is the antithesis of good faith. *Questar*, 410 Md. at 282. The parties to this contract, both of which are sophisticated commercial entities, bargained for numerous outs, *see* Sections 21.01, 21.02, including an easy-out, six

[2] For example, Section 21.01(b) allows termination if one party is "in material default of its other obligations" and the default is not cured in 30 days. Section 21.01(c) provides for termination in neither party makes an assignment for the benefit of creditors or becomes insolvent. Section 21.01(e) provides for termination in the event of abandonment of the hotel by the operator. Section 21.01(f) allows for termination in the event of fraud or gross negligence by either party.

months prior notice and the payment of a termination fee. *See* Section 21.03. Brewmasters could have availed itself of the easy out provision under Section 21.03 by giving Hospitality Partners six months prior notice and paying the termination fee. But, Brewmasters chose another path. It fired the plaintiff in March 2010, basically on the spot—claiming that Hospitality Partners was grossly negligent in the performance of the agreement and refused to pay the plaintiff a termination fee. The testimony at trial is clear that Brewmasters never had any intention of paying Hospitality Partners a termination fee or affording it six months notice prior to terminating the contract.[3]

Now, however, after a jury has rejected Brewmasters factual contentions—including the stated reasons for the termination and the contention that Hospitality Partners materially breached the agreement—Brewmasters wants the benefit of a contract provision it did not use and with which it did not comply, after forcing the non-breaching party to litigate to collect what Brewmasters should have tendered in the first instance under a no-cause termination. The court rejects the notion that a party to a contract such as the one at issue can breach his express promises—to provide six months prior notice and pay a termination fee if a contract is terminated for no cause—yet claim, when he fails to prove that the contract was terminated for cause, that the no cause provision caps his damages after losing at trial. Such a contention has been rejected by a number of well

[3] For that reason, among others, see Maryland Rule 5-403, the court excluded defense Exhibit 131. Additionally, the so-called Section 21.03 notice, dated April 30, 2010, is legally ineffective because it did comport with the express terms of the contract: it did not give six months prior notice and tender the contractual termination fee. Further, no adequate offer of proof was made by defense counsel as to why this exhibit was properly admissible in evidence at the time it was offered. Maryland Rule 5-103(a)(2); *see Waldt v. Univ. of Md. Med. Sys.*, 181 Md. App. 217, 257-58 (2008), *rev'd in part on other grounds*, 411 Md. 207 (2009). The defendants are incorrect that the court's *in limine* ruling barred the offer or admission of relevant evidence at trial on any issue then properly before the jury. (Proceedings of July 15, 2011; Tr. 133:9-135:2). The *in limine* ruling thus did not preclude the defendants from offering at trial relevant evidence, as was the circumstance in *Prout v. State*, 311 Md. 348, 357-58 (1988).

reasoned decisions. For example, in *Rogerson Aircraft Corp. v. Fairchild Indus., Inc*., 632 F. Supp. 1494 (C.D. Cal. 1986), Fairchild, the aircraft manufacturer, purported to terminate an aircraft parts contract for cause, and thereby avoid paying a termination fee. 632 F. Supp. at 1497. Having been unsuccessful in persuading the court after a bench trial that it terminated the contract for cause, Fairchild argued nonetheless that the plaintiff's damages were limited to the fee to be paid upon a no cause termination. The district court flatly rejected that contention. 632 F. Supp. at 1499. *Accord, Klein v. United States*, 285 F.2d 778 (Ct. Cl. 1961).[4]

A similar result obtained in *Chevrolet Motor Co. v. Gladding*, 42 F.2d 440 (4th Cir. 1930). In that case, an automobile dealership contract contained three provisions for termination. 42 F.2d at 441-42. The manufacturer assigned only one reason, which was found to be groundless after a trial. The Fourth Circuit rejected the manufacturer's attempt to limit its damages by invoking another termination clause in the contract which had not been pled or proven. 42 F. 2d at 444-45. *Accord, David J. Joseph Co. v. United States*, 82 F. Supp. 345, 350-51 (Ct. Cl. 1949).[5]

Consistent with its pleadings, Brewmasters' unwavering position at trial was that Hospitality Partners performed deficiently, both before and after the hotel opened, and

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[4] Subsequent to *Klein*, federal regulations were amended to allow the United States to include in government contracts a provision that automatically converted a faulty for-cause termination into a for convenience termination, and thereby limit the government's damage liability. *See Descon System, Ltd. v. United States*, 6 Ct. Cl. 410, 413 (1984). There is no similar language in this contract.

[5] Brewmasters attempts to distinguish *Gladding* by citing to *Strategic Outsourcing, Inc. v. Continental Cas. Co*., 274 Fed. Appx. 228 (4th Cir. 2008), an unpublished decision of the Fourth Circuit. *Strategic Outsourcing*, decided under North Carolina law, is factually distinguishable and, in any event is not persuasive. Additionally, it is an unpublished decision which, like the unpublished decisions of the Court of Special Appeals, generally is not regarded as precedential. Maryland Rule 1-104.

was properly terminated for gross negligence in March 2010. The court instructed the jury that the party who asserted a claim or an affirmative defense has the burden of proving it by a preponderance of the evidence. (Tr. July 20, 2011, at 7:19-22). The jury was instructed that Brewmasters had the burden of proving that Hospitality Partners materially breached its obligations under the management agreement, or that Hospitality Partners performed in a grossly negligent manner. (Tr. 12:12-16). This latter instruction was given at Brewmasters' request and over Hospitality Partners objection. *See* Section 21.02(b), which states that the right of termination set out in § 21.02(a) "shall not be in substitution for, but shall be in addition to, any and all rights and remedies for breach of contract available at law or in equity."

Theo Rogers and Anthony Rogers both testified unequivocally at trial that Hospitality Partners was terminated "for cause" and that Brewmasters never contemplated paying Hospitality Partners a termination fee under Section 21.03(b). Defendant Singleton's testimony was in accord. Neither defendant requested a jury instruction to the effect that damages were limited to those provided in Section 21.03(b).[6]

Using a special verdict sheet that had been expressly approved by the parties, Maryland Rule 2-522(c), the jury made a number of important factual findings based on the evidence presented at trial. First, the jury rejected Brewmasters' stated ground for terminating its contract with Hospitality Partners under §21.01(f), finding that

[6] During closing argument, when defense counsel began to argue to the jury that the contract allowed Brewmasters to terminate the agreement for "no cause," plaintiff's counsel promptly objected. (Tr. 14:24-15:16). At the bench, the court asked defense counsel to delineate any evidence that was before the jury which permitted it either to award damages under the "no-cause" provision or to find that Brewmasters intended to comply with that provision. (Tr. 15:21-16:10). Defense counsel was unable to cite any evidence of record to support either contention. (Tr. 16:11-23). As a consequence, the plaintiff's objection was sustained and the jury given a cautionary instruction. (Tr. 18:9-15). No exception was taken to the cautionary instruction.

Brewmasters had failed to prove that the plaintiff was grossly negligent in the operation of the hotel. Second, the jury rejected Brewmasters' common law theory of termination, finding that Hospitality Partners did not materially breach the hotel management agreement. *See Storetrax*, 168 Md. App. at 75 n.2. Third, the jury found that the plaintiff had proven that it had been damaged by Brewmasters' conduct. Fourth, the jury found that Hospitality Partners had proven damages in the amount of $2,880,801. Finally, with respect to the derivative claim, the jury found that Mr. Singleton was personally liable to Brewmasters for 33 1/3% of the total damages awarded to Hospitality Partners.

There is no factual or legal basis, which permits the defendants now to complain about any defect in the special verdict sheet. *See Edwards v. Gramlin Eng'g Corp.*, 322 Md. 535, 550 (1991).

III.

The defendants take issue with several of the court's jury instructions. The standards that apply to jury instructions given by the trial court were summarized recently by the Court of Special Appeals in *Prince George's Cnty. v. Longtin*, 190 Md. App. 97, 137 (2010). Writing for the Court, Judge Zarnoch explained:

> When considering the adequacy of jury instructions, we examine the charge as a whole. *Blanchfield v. Dennis*, 292 Md. 319 322 n.3 (1982). In addition, under Md. Rule 2-520(e), "no party may assign as error the giving or failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds for the objection." Finally, the burden of showing reversible error and prejudice from an instruction rests with the complaining party. *Landon v. Zorn*, 389 Md. 302, 225 (2005).

190 Md. App. at 137 (footnote omitted).

Moreover, the trial court need not give a requested instruction "if the matter is fairly covered by the instructions actually given." Maryland Rule 2-520(c); *see Wegand v. Howard St. Jewelers*, 326 Md. 409, 414 (1992).

At the close of the instructions in this case, the court specifically and advisedly asked counsel: "Any objections, or need to approach, or exceptions." (Proceedings of July 20, 2011; Tr. 13:23). The only instruction then objected to by either Brewmasters or Mr. Singleton was the court's instruction on good faith. (Tr. 14:7-18). That instruction told the jury that under "the law of Maryland, the parties to a contract must act in good faith and consistent with principles of fair dealing." (Tr. 11:6-8).[7] No other objections or exceptions were noted by defense counsel. Hence, the court's giving or failure to give any other instruction—apart from the aforementioned good faith instruction—simply is not properly preserved for review by this court on post-trial motions or likely by the Court of Special Appeals on appellate review. Maryland Rule 2-520(e). *See Casey v. Roman Catholic Archbishop of Baltimore*, 217 Md. 595, 612 (1958) (discussing the predecessor rule). Moreover, at no time did the defendants ask the court to instruct the jury that damages were limited to the § 21.03 six month notice period or object to the court's failure to do so after the jury was charged.

The jury was specifically instructed that it was to give separate consideration to Brewmasters and Mr. Singleton. (Tr. 9:1-5). The jury was told that in order to hold Mr.

[7] The remainder of the good faith instruction stated: "Under a contract, a party exercising discretion must refrain from doing anything that will frustrate or destroy the rights of the other party to receive the fruits of the contract that was made between them. Each party to a contract must do everything that the contract presupposes they will do to accomplish its purpose. Thus, upon entering into a binding contract for a specified duration, the parties thereto give up their opportunity to shop around for a better deal or a better price. Stated another way, the obligation of good faith and fair dealing requires a party to a contract to exercise their discretion in accordance with the reasonable expectations of the other party to the contract." (Tr. 11:8-20).

Singleton personally liable, the jury had to "find either that he acted with gross negligence, or that he engaged in intentional misconduct, or that he received a personal benefit in violation of the contract." (Tr. 12:21-25). Neither defendant requested a "clear and convincing" evidence instruction and took no exception to the court's supplemental instruction. *See Dawkins v. State*, 313 Md. 638, 642-43 (1988). When the jury came back with a question regarding how much of Brewmasters liability to the plaintiff it could "allocate" to Mr. Singleton, defense counsel agreed with the response given by the court to the jury.

IV.

The defendants also ask for a new trial on a variety of other grounds and for alternative relief, remittitur of the verdict.

Having presided over the trial, and watched the proceedings very closely, the court concludes that the jury's liability and damage verdicts in this case were not driven by anything other than a fair assessment of the evidence. *See Buck v. Cam's Broadloom Rugs, Inc*., 328 Md. at 57–60. Any erroneous evidentiary rulings, which the court frankly does not perceive, were not prejudicial and thus not cause for a new trial even if they were preserved. Maryland Rule 5-103(a). *See Angelakis v. Teimourian*, 150 Md. App. 507, 525 (2003).

Each trial is different; none is perfect. Perhaps these considerations occasioned the following comment by the Court of Appeals:

> Because the exercise of discretion under these circumstances depends so heavily upon the unique opportunity the trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record, it is a discretion that will rarely, if ever, be disturbed on appeal.

Buck v. Cam's Broadloom Rugs, Inc., 328 Md. at 59.

In considering a motion for a new trial, the trial court is permitted to bring to bear "its own common knowledge, as well as its experience with other jury verdicts." *Hebron*, 166 Md. App. at 643, *quoting Fertile v. St. Michael's Med. Ctr.*, 169 N.J. 481, 501 (2001). Before joining the bench, this member of the court was, for over a decade, national litigation counsel for the world's largest pharmaceutical company. In that capacity, the court either personally tried, or supervised the trial of, hundreds of defendant's cases in jurisdictions (including Maryland) all over the United States. In addition, the court represented plaintiffs in complex cases in New York, Florida, Maryland and other States. This court has (as a trial lawyer and as a judge) seen low verdicts, high verdicts, and outlier verdicts. The verdict in this case, on liability and damages, was no "surprise" and was amply support by the evidence. *See Banegura*, 312 Md. at 624; *Hebron*, 166 Md. App. at 628. *Cf. Owens Corning v. Bauman*, 125 Md. App. 454, 523-26 (1999); *ACandS v. Abate*, 121 Md. App. 590, 691–93 (1998).

Conclusion

The court has fully considered all of the grounds for relief advanced by the defendants, although only certain points have been specifically addressed in this opinion. For the reasons set forth herein, and for those expressed by the court on the record in the several post-trial hearings, the defendants' motions for a new trial, for revision of the judgment and for remittitur, are denied. It is SO ORDERED this 12th day of September, 2011.

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Ronald B. Rubin, Circuit Court Judge