NO. 4-10-0028 Filed 6/28/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| LAURA DIAZ, Independent Administratrix of the Estate of FRANCISCO MORENO GARCIA, Deceased, Plaintiff-Appellee, v. ARCHER DANIELS MIDLAND COMPANY, Defendant-Appellant. | ) ) ) ) ) ) ) ) | Appeal from Circuit Court of Macon County No. 07L142 Honorable Thomas E. Little, Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the judgment.

**ORDER**

*Held:* After a jury trial, the plaintiff, as independent administratrix of the estate of decedent, received a $6,731,395.70 judgment against defendant in the wrongful-death and survival actions she brought against defendant. Defendant appealed, arguing the following: (1) the trial court erred in excluding evidence pertaining to decedent's immigration status; (2) defendant was denied a fair trial resulting in an excessive verdict because (a) plaintiff made improper remarks during closing argument, (b) the trial court refused a jury instruction tendered by defendant regarding the effect decedent's alleged marriage would have on his family's next of kin status, (c) the court refused to remove a workers' memorial outside the courthouse, and (d) the court refused to allow certain testimony from a defense witness; (3) the judgment should be reduced to $50,000 because plaintiff did not file an affidavit pursuant to Rule 222(b) with the initial complaint she filed; and (4) the jury's verdict was excessive. We affirm, holding the trial court did not abuse its discretion in prohibiting evidence regarding decedent's immigration status, defendant was not denied a fair trial, the judgment should not be reduced to $50,000, and the jury's verdict was not excessive.

In September 2009, a jury returned a verdict against defendant, Archer Daniels Midland Company (ADM), in favor of plaintiff, Laura Diaz, the independent administratrix of

the estate of Francisco Moreno Garcia (decedent), for $6,741,730.61. The trial court entered judgment for plaintiff for $6,731,395.70 after setting off funeral expenses ADM had already paid.

ADM appeals, raising numerous issues. First, ADM argues the trial court should have allowed ADM to introduce evidence regarding decedent's immigration status in the United States. Second, ADM argues it was denied a fair trial because (1) plaintiff made numerous improper remarks during closing arguments; (2) the court refused ADM's tendered jury instruction regarding the status of decedent's parents and siblings as decedent's "next of kin" if decedent was married; (3) the court refused to remove a workers' memorial outside the courthouse; (4) the court barred as a discovery sanction testimony proffered by a defense witness; and (5) the court's evidentiary errors and plaintiff's counsel's misconduct caused an excessive verdict. Third, ADM argues the judgment should be reduced to $50,000 because plaintiff failed to file an affidavit pursuant to Illinois Supreme Court Rule 222(b) with her original complaint. Fourth, and finally, ADM argues the verdict is excessive because it lacks evidentiary support, falls outside the range of fair and reasonable compensation, and results from passion and prejudice. As a result, ADM argues it is entitled to a new trial or, alternatively, a remittitur. We affirm.

## I. BACKGROUND

As the relevant issues are discussed at length later in this opinion, we provide only a brief overview of the history of this case. Decedent, who had been an employee of Engineers Contractors Fabricators, Inc. (ECF), since November 2005, died as a result of a March 2007 workplace accident at an ADM facility in Decatur, Illinois. The administratrix of his estate,

Laura Diaz, brought this wrongful-death and survival action against ADM.

Decedent was working for ECF as a laborer on an insulation crew at the ADM facility on the day of the accident. The accident occurred when a pipe exploded while decedent was working out of a lift cage nearby. Decedent was thrown out of the lift cage but was left hanging in the air by his safety harness. Steam and extremely hot liquids sprayed out of the pipe and onto decedent. Decedent suffered severe burns over 90% of his body.

As decedent's clothes were taken off, his skin peeled off inside of the clothes. When decedent touched his face, his skin peeled off his face. Paramedics arrived between 15 and 18 minutes later but could not give decedent anything for his pain. Eventually, after arriving at the hospital in Decatur, doctors administered powerful drugs for his pain. One of the drugs administered was Diprivan, which prevents an individual from experiencing or remembering pain or anxiety while under the drug's effect. However, decedent was conscious and in severe pain for approximately 70 minutes after the accident. Nurse Susan Dugger, who provided nursing services to decedent, testified this was one of the worst things she had seen as a nurse.

ADM did not deny liability for the accident. However, ADM contested damages. In November 2007, ADM filed a motion for judgment on the pleadings pursuant to sections 2-615(b) and (e) of the Code of Civil Procedure (735 ILCS 5/2-615(b), (e) (West 2006)), arguing plaintiff's failure to attach an affidavit pursuant to Supreme Court Rule 222(b) to her complaint barred her from recovering more than $50,000. As a result, ADM asked for a judgment on the pleadings in favor of plaintiff and against ADM for $50,000 plus court costs.

That same month, plaintiff filed a motion for leave to file an amended complaint with an attached affidavit pursuant to Rule 222. In December 2007, the trial court denied ADM's

motion for judgment on the pleadings and allowed plaintiff to file an amended complaint with affidavit. Plaintiff filed her first amended complaint with affidavit on December 7, 2007.

In September 2009, the trial court granted plaintiff's motion *in limine* to bar any evidence, suggestion, or argument regarding the immigration status of decedent or any witness. The trial court also denied defendant's August 2009 motion for leave to amend to add a third affirmative defense based on defendant's immigration status.

That same month, a jury returned a verdict against ADM, awarding plaintiff damages totaling $6,741,730.61.

In December 2009, the trial court denied ADM's posttrial motion. This appeal followed.

## II. ANALYSIS

### A. Evidence of Immigration Status

We first address ADM's argument the trial court erred in excluding evidence regarding decedent's immigration status. According to ADM, evidence decedent was an illegal immigrant was admissible to rebut plaintiff's pecuniary-loss claim. This appears to be a question of first impression in Illinois.

ADM points out the Immigration Reform and Control Act of 1986 (IRCA) prohibits the employment of illegal aliens. 8 U.S.C. §1324(a) (2006). The IRCA mandates an employer verify a prospective employee is not an illegal alien by examining specified documents establishing the person's identity and employment eligibility. 8 U.S.C. §1324a(b)(1) (2006). ECF did this.

ADM concedes the prevailing view is the IRCA does not preempt state tort claims

for lost earnings. However, citing *Madeira v. Affordable Housing Foundation, Inc.*, 469 F.3d 219, 248 (2d Cir. 2006), and *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1259 (N.Y. 2006), ADM argues some courts allow defendants to introduce evidence regarding a plaintiff's illegal-alien status so a jury can more accurately assess damages.

ADM quotes the following language from a New York Appellate Division decision:

> "[A] plaintiff's immigration status is relevant to a determination of damages for lost wages and presents an issue of fact to be resolved by the jury. *** [T]he jury may take the plaintiff's status into account, along with the myriad other factors relevant to a calculation of lost earnings, in determining, as a practical matter, whether the plaintiff would have continued working in the United States throughout the relevant period, or whether his or her status would have resulted in, *e.g.*, deportation or voluntary departure from the United States." *Majlinger v. Cassino Contracting Corp.*, 802 N.Y.S.2d 56, 68-69 (N.Y. App. Div. 2005).

ADM also cites opinions from other jurisdictions for the proposition a lost-earnings claim should be completely barred where a plaintiff violates the IRCA by submitting fraudulent documents to obtain employment. See *Veliz v. Rental Service Corp. USA, Inc.*, 313 F. Supp. 2d 1317, 1335 (M.D. Fla. 2003); *Rosa v. Partners in Progress, Inc.*, 868 A.2d 994, 1002 (N.H. 2005); *Balbuena*, 845 N.E.2d at 1260.

According to ADM, evidence regarding decedent's alleged illegal-alien status is

relevant to a pecuniary-loss claim because an element of those damages is the money, benefits, goods, and services decedent was likely to have contributed in the future. ADM also argues this evidence is relevant because it helps establish decedent's character traits and his relationship with family members.

1. *The Trial Court Did Not Abuse Its Discretion*

We will only reverse a trial court's decision to exclude evidence if we find the court abused its discretion. *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 377, 805 N.E.2d 222, 231 (2003). An abuse of discretion occurs when no reasonable person would adopt the trial court's view. *Clayton*, 346 Ill. App. 3d at 377, 805 N.E.2d at 231. "The reasons a court gives are not material if there is a proper basis appearing in the record or law that would sustain the ruling." *McGrew v. Pearlman*, 304 Ill. App. 3d 697, 703, 710 N.E.2d 125, 129 (1999).

In this case, the trial court did not abuse its discretion in granting plaintiff's motion *in limine* to prohibit ADM from presenting evidence decedent allegedly was an illegal immigrant. Although ADM takes it as a given in its brief decedent was an illegal immigrant, the evidence defendant sought to rely upon and provided in its offer of proof does not establish such, and any inference drawn from the evidence regarding decedent's legal status would be speculative at best.

As a result, the case *sub judice* is different than most of the cases relied upon by ADM. In those cases, the status of the immigrants was not in doubt. See *Madeira*, 469 F.3d at 223-24 (plaintiff was citizen of Brazil who illegally entered the United States and worked without any documentation); *Balbuena*, 845 N.E.2d at 1250 (plaintiff Balbuena, a native of Mexico who entered the United States without the permission of federal immigration authorities,

admitted he did not possess work authorization documents); *Majlinger*, 802 N.Y.S.2d at 58 (plaintiff immigrated to the United States from Poland, was in the country on an extension of a tourist visa, and did not possess any "of the documents enumerated in the federal immigration statutes and regulations [citations] that would demonstrate his eligibility for employment in the United States"); *Collins v. New York City Health & Hospitals Corp.*, 607 N.Y.S.2d 387, 388 (N.Y. App. Div. 1994) ("plaintiff commenced this action to recover damages for medical malpractice and wrongful death of the decedent, an illegal alien from India"); *Villasenor v. Martinez*, 991 So. 2d 433, 434 (Fla. Dist. Ct. App. 2008) (plaintiff was an illegal immigrant); *Melendres v. Soales*, 306 N.W.2d 399, 401 (Mich. Ct. App. 1981) (plaintiff was an illegal alien from Mexico); *Klapa v. O & Y Liberty Plaza Co.*, 645 N.Y.S.2d 281, 281 (N.Y. Sup. Ct. 1996) (plaintiff was a Polish national who came to the United States in March 1991 and had been illegally living and working in the United States since March 1992); *Salas v. Hi-Tech Erectors*, 230 P.3d 583, 584 (Wash. 2010) (plaintiff had a visa when he entered the United States in 1989, but the visa expired in 1994; his application for citizenship had never been processed); *Veliz*, 313 F. Supp. 2d at 1319 (the decedent was an undocumented alien in the United States).

While evidence of a plaintiff's immigration status might be admissible in certain cases, the trial court did not abuse its discretion in excluding evidence regarding plaintiff's immigration status in this case. The evidence defendant sought to introduce in this trial did not establish decedent was in the country illegally. The suggestion decedent was an illegal immigrant would have been extremely prejudicial. The prejudice resulting from such a suggestion far outweighed its limited relevance. In addition, the evidence ADM put forth in its offer of proof was speculative at best. ADM presented no evidence in its offer of proof decedent

was under investigation by immigration officials or was at risk for deportation in the future. Further, ADM offered no witness who could testify to decedent's immigration status. It merely expected the jury to examine decedent's documents and make an independent determination, without expert testimony, that the documents were false, something ECF itself was apparently incapable of doing. Lastly, the cases relied on by defendant involved lost-earnings claims. Here, plaintiff made no claim for lost earnings.

*2. Plaintiff's Counsel Did Not Clearly Violate Motion in Limine*

ADM next argues it is entitled to a new trial because plaintiff violated the *in limine* order by repeatedly implying decedent was a legal immigrant. The trial court's *in limine* orders barred "any evidence, suggestions, inquiries, or argument regarding the immigration status of" decedent and any witness. ADM cites the Fifth District's opinion in *Boren v. The BOC Group, Inc.*, 385 Ill. App. 3d 248, 257, 895 N.E.2d 53, 62 (2008), for the following proposition:

> "A new trial may be granted for a violation of an *in limine* order if the order's prohibitions are specific, the violation is clear, and the violation deprived the moving party of a fair trial. [Citation.] An improper insinuation during closing argument that violates an *in limine* order can be the basis for a new trial."

ADM alleges plaintiff's counsel violated the *in limine* order on multiple occasions. The first alleged violation occurred during *voir dire* when a prospective juror and plaintiff's counsel had the following exchange.

> "[Plaintiff's Counsel]: Now, I am going to ask you some of

the questions that I asked Mr. Larson about Mexico. Okay. And about the issue of workers coming from Mexico to the United States working here.

Do you have any problems or strong feelings about that subject?

[Prospective Juror]: I only feel they need to be legal.

[Plaintiff's Counsel]: Uh-huh. Well, there is not going to be any issue in this case about legal.

[Prospective Juror]: Well, okay."

At that time, ADM asked for a side bar. According to a trial-court-approved bystander report of the side-bar conference:

"Defense Attorney Stocks objected to the *voir dire* examination of Plaintiff's attorney on the basis that it implied that the decedent was a lawful immigrant working in the United States and that the examination violated Plaintiff's own motion *in limine* order restraining the defense. Defense Attorney Stocks asked the Court to reconsider the Court's order on Plaintiff's Motion *in Limine* barring the defense from comments, interrogation or suggestions regarding the decedent's unlawful status or, alternatively, for a mistrial. The trial judge admonished Plaintiff's attorney that the Court had ruled in the Plaintiff's favor on the pre-trial motion barring the defense from any evidence, comment or

> suggestion and told Plaintiff's attorney that if he persisted the Trial Court could reconsider the rulings in favor of the Plaintiff or grant the mistrial. The Defendant's Motion to Reconsider those rulings and Motion for Mistrial were denied at the side bar conference."

ADM argues the trial court should have granted the mistrial at that time.

According to ADM, while the prospective juror was not ultimately seated, plaintiff's counsel's "remark tainted the entire panel because it was made before the jurors who were ultimately seated." ADM argues the remark strengthened the impermissible implication decedent was a legal immigrant. According to ADM:

> "Certainly, that was the impression at least some panel members formed. After counsel's remark, venireman Etherton dismissed her misgivings about illegal aliens precisely because she did not think this was such a case: 'I have concerns with illegal immigrants coming to our country, but I don't think that would affect this particular case.'"

However, after reviewing the transcript, it is not clear Etherton believed decedent was a legal immigrant. Her answer could easily be interpreted to mean she could be fair and impartial regardless of the legal status of an injured Mexican worker in the United States. This interpretation is supported by her response to the next question from plaintiff's attorney that she knew of no reason why she could not be a fair and impartial juror.

Plaintiff's counsel's statement to the prospective juror "there is not going to be any issue in this case about legal" did not clearly violate the motion *in limine*. Based on counsel's

words alone, which is all this court has to go by, it does not appear he was saying or implying decedent was a legal immigrant. Instead, it appears he was simply stating decedent's immigration status would not be an issue in the case.

ADM next argues plaintiff's counsel violated the *in limine* order by eliciting testimony from decedent's parents about their immigration status. However, plaintiff's counsel elicited no testimony about the parents' immigration status. On redirect examination, plaintiff's counsel asked decedent's parents why they did not *visit* decedent in the United States, not why they did not immigrate to the United States. These questions did not violate the *in limine* order.

ADM did not object to either of these questions nor did it move to strike the answers. Further, plaintiff's counsel only asked these questions after defense counsel asked decedent's parents on cross-examination if they had ever come to the United States to visit decedent. Plaintiff's attorney's follow-up questions were designed to explain why decedent's parents had not visited their son in the United States.

ADM also argues plaintiff's counsel violated the *in limine* order during closing arguments when he stated decedent's parents did not visit him in the United States because they could not obtain visas. However, as we previously stated, these comments did not violate the *in limine* order as they had nothing to do with the immigration status of decedent's parents. In addition, the comment was made by plaintiff's counsel in rebuttal after ADM argued (1) decedent only made one trip back to Mexico in the nine years he lived in the United States; (2) his family did not know where he worked in California or what other states he lived in; and (3) some of the evidence presented at trial did not coincide with decedent's family's assertions regarding their relationship. ADM also failed to object to these questions.

Finally, ADM complains about plaintiff's attorney's statements regarding decedent coming to the United States for a significant period of time to try to "capture his share of the American dream." We again do not see how this statement violates the *in limine* order. Americans learn from their earliest days the United States is a land of opportunity. A statement someone came to the United States to capture his share of the American dream is applicable to both legal and illegal aliens. In addition, ADM failed to make a contemporaneous objection.

*3. ADM Is Not Entitled to a New Trial Based on This Issue*

ADM argues the prejudice caused by the trial court's alleged error in denying evidence of decedent's immigration status is evidenced by the $4,680,000 pecuniary-loss award. However, for the reasons previously stated, the trial court did not abuse its discretion in denying evidence of decedent's immigration status. While ADM characterizes this evidence as "critical," it was speculative at best and any relevance it had was far outweighed by its potential prejudicial impact. ADM also argues plaintiff's counsel's repeated violations of the *in limine* orders further inflated the pecuniary-loss award. However, as stated, plaintiff's counsel did not clearly violate the *in limine* order. ADM is not entitled to a new trial based on the trial court's ruling or plaintiff's counsel's actions with regard to the order *in limine*.

B. Other Alleged Errors

ADM argues it was denied a fair trial for a variety of reasons, including the following: (1) plaintiff's counsel made numerous improper remarks during his closing argument; (2) the trial court refused ADM's proposed jury instruction regarding next-of-kin status for decedent's parents and siblings if decedent was married; (3) the court refused to remove a

workers' memorial outside the courthouse; and (4) the court refused to allow an ADM worker to testify as to when he believed the accident occurred. ADM argues the court's evidentiary errors and plaintiff's counsel's misconduct caused an excessive verdict.

1. *Plaintiff's Closing Argument*

ADM argues plaintiff's closing arguments were improper because they were "gratuitously inflammatory" and violated an *in limine* order which barred evidence of "wealth" and "poverty." The standard of review for improper argument "is whether the argument is of such a character as to have prevented defendant from receiving a fair trial." *Cooper v. Chicago Transit Authority*, 153 Ill. App. 3d 511, 524, 505 N.E.2d 1239, 1247 (1987).

According to ADM, plaintiff's closing argument contained many prejudicial remarks, including counsel's improper expression of "his personal opinion of how much the jury should award for loss of society." ADM points to counsel's remarks that he thought or believed the death of a son and brother is worth at least $6,500,000. ADM argues plaintiff had no evidence supporting these figures. While ADM made an initial objection, which was sustained, ADM did not object to the specific comments when they were made.

As a result, ADM forfeited its arguments regarding portions of plaintiff's closing argument to which it did not object.

> "'Failure to object to alleged errors in an opponent's closing argument is considered waiver of the objection. [Citation.] Generally failure to object to any impropriety in counsel's closing argument results in waiver unless comments are so inflammatory and prejudicial that plaintiff is denied a fair trial.'" *Hubbard v.*

*Sherman Hospital*, 292 Ill. App. 3d 148, 156, 685 N.E.2d 648, 654 (1997) (quoting *Limanowski v. Ashland Oil Co.*, 275 Ill. App. 3d 115, 118, 655 N.E.2d 1049, 1051 (1995)).

ADM asks us to apply the plain-error doctrine to excuse these forfeitures. However, the plain-error doctrine is rarely applied in civil cases. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 856, 923 N.E.2d 937, 955 (2010). Our supreme court has stated:

> "'If prejudicial arguments are made without objection of counsel or interference of the trial court to the extent that the parties litigant cannot receive a fair trial and the judicial process stand without deterioration, then upon review this court may consider such assignments of error, even though no objection was made and no ruling made or preserved thereon.' (Emphasis added.) [Citation.]" *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375, 553 N.E.2d 291, 297 (1990).

We decline to apply the plain-error doctrine here because ADM has neither established error nor that the comments in question resulted in an unfair trial.

ADM also complains counsel's statements comparing ADM's wealth with decedent's family's poverty violated an *in limine* order barring evidence of "wealth" or "poverty." ADM objected to the following comment by plaintiff's counsel in rebuttal argument:

> "And you know what I thought was really telling, and I wrote it down, when counsel [for ADM] said for loss of society $50,000 to $100,000, that's plenty for this family. I wonder what the situation

would be if Francisco Garcia had been the son of an executive at ADM?"

The trial court overruled ADM's objection, holding plaintiff's counsel's statements constituted argument. The court did not err in doing so. Attorneys are given wide latitude in closing arguments. *Sutton v. Overcash*, 251 Ill. App. 3d 737, 763, 623 N.E.2d 820, 837 (1993). In addition, ADM invited this argument with its closing argument when it stated:

> "Now, when deciding what the value of Francisco Moreno Garcia was to this family, well, you find yourself speculating about what type of person he was. Have they really given you a background and described who he was? That's evidence. It comes down to the answers you know or the feelings you have, if you allow sympathy to drive, then you have been more than fair to the plaintiff and less than fair to the defendant. It is your obligation to be balanced and consider all the facts in this case.
>
> His habits of sobriety and thrift, I don't think we have any evidence on any sobriety issue one way or the other.
>
> His physical and mental characteristics. We have really no evidence on that other than in one source he was a sixth grade graduate, and another witness he was a ninth grade graduate, and he last went to school at age fifteen.
>
> His occupational abilities, no special skills; but his supervisor thought he was a good worker.

With regard to the Wrongful Death Act count, the contribution stream could be maintained as it was ever enjoyed with $100,000 to $120,000.

If you find that there was a loss of society on top of that for the family members, you are given one line item on the verdict form. Not this layering approach as was suggested by plaintiff's counsel, but one item for pecuniary loss. That will be decided and determined at a later date how that is distributed. *We would submit that that line item could be anywhere between $50,000 to $150,000. That is a reasonable amount if you find that they are the next of kin. That for this family and the experience that they'd have contributions from Mr. Garcia is much more than what they had enjoyed while he was living. I am sorry but that's true.* We know what he contributed. We know he was never around for nine years.

You heard all the evidence. Just a few more comments about the closeness. Some of the brothers, it was a surprise that he even came to the United States. He didn't say goodbye to some of them. There are little antidotes [*sic*] throughout the evidence that seemed not to fit with the picture that this was the tight knit family that has now been disrupted. Disrupted to the tune of some really large amounts of money. That's not what the evidence supports.

> Not at all. That's not reasonable. Not reasonable in the least. You set the standards for our community in deciding what is reasonable." (Emphasis added.)

Plaintiff's counsel's closing argument did not deny ADM a fair trial.

2. *Jury Instruction*

ADM next argues the trial court abused its discretion in refusing to define "next of kin" in the jury instructions. ADM submitted a Non-IPI instruction which stated: "As to Count I, if you find that the decedent was survived by a spouse, then the decedent's parents and adult siblings are not next of kin and the Administrator is not entitled to pecuniary damages on their behalf." The trial court refused this instruction.

Our supreme court has stated:

> "The decision to give or deny a tendered instruction is within the discretion of the trial court. [Citation.] So long as the tendered instructions clearly and fairly instruct the jury, a party is entitled to instructions on any theory of the case that is supported by the evidence." *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 549, 901 N.E.2d 329, 349 (2008).

However, a trial court only abuses its discretion in refusing a jury instruction which meets the above requirements "if the refusal prejudices the party's right to a fair trial." *Mikolajczyk*, 231 Ill. 2d at 562-63, 901 N.E.2d at 356.

ADM argues it was prejudiced because the trial court only instructed the jury that if it determined decedent's parents and siblings were his next of kin then it should find for

plaintiff, but if it found decedent's parents were not his next of kin then it should find for ADM. According to ADM, because the instructions given did not tell the jury "next of kin" has a specific legal meaning, the jury was free to apply a lay definition of next of kin.

However, it does not appear ADM ever expressed this concern to the trial court. In addition, based on the following exchange at trial, ADM's trial counsel clearly did not feel strongly about this instruction:

> "[Trial Court]: Any other instructions from the defendant?
>
> [ADM's Counsel]: No. 13, which is Non-I.P.I., based on the *Rodgers v. Consolidated Railroad* case. *It might be resolved by some of the other instructions. I guess I would tender it at this time, but I could see how it would be resolved perhaps by other instructions.*
>
> [Trial Court]: I assume you object to this one, Mr. Shapiro?
>
> [Plaintiff's Counsel]: Yes, I do, but I am looking for it because ours were not numbered here, and we are kind of--our set was not numbered.
>
> It is the *Rodgers v. Consolidated Railroad*?
>
> [ADM's Counsel]: That is correct.
>
> [Plaintiff's Counsel]: Well, I would object to it for all the reasons I cited before; and, secondly, it is duplicative. If you are going to give a burden of proof instruction it is improper to single

out a single element of the burden of proof.

[Trial Court]: I am going to show Defendant's No. 13 is refused. I am anticipating that we will resolve the issues raised by this in perhaps some of the other instructions. If you don't feel that we have, Mr. Stocks, you certainly can re-tender it and ask me to reconsider it. Okay." (Emphasis added.)

It does not appear from our review of the record ADM ever re-tendered this instruction. As a result, ADM, in effect, forfeited this argument.

However, even if this argument was not forfeited, ADM's right to a fair trial was not prejudiced by the trial court's refusal of this instruction. ADM's trial counsel was free to argue to the jury decedent's parents and siblings were not entitled to damages on count I if the jury found decedent was married. In addition, the trial court instructed the jury in part as follows:

"As to Count I, the plaintiff claims that the next of kin of the decedent are: Gloria Garcia Barragan; Antonio Moreno Valencia; Marco Antonio Moreno Garcia; Ricardo Moreno Garcia; Jose Juan Moreno Garcia; Maria Isabelle Moreno Garcia; and Gloria Moreno Garcia.

The plaintiff further claims that the next of kin sustained pecuniary damage as a result of the death of Francisco Moreno Garcia.

The defendant denies that the alleged beneficiaries are the next of kin and denies the nature and extent of pecuniary damages

claimed by the plaintiff.

When I say a party has the burden of proof on any proposition, or use the expression 'if you find,' or 'if you decide,' I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

The plaintiff has the burden of proving the nature and extent of the damages.

As to Count I, the defendant admits that it was negligent. The defendant also admits that its negligence was a proximate cause of Francisco Garcia's death. You need only decide whether Gloria Garcia Barragan, Antonio Moreno Valencia, Maria Isabella Moreno Garcia, Gloria Moreno Garcia, Marco Antonio Moreno Garcia, Jose Juan Moreno Garcia, and Ricardo Moreno Garcia are Francisco Garcia's next of kin; and, if so, what amount of money compensates them for their pecuniary loss."

As a result, the jury was adequately admonished, and ADM's right to a fair trial was not prejudiced.

3. *Workers' Memorial*

ADM next argues the workers' memorial outside the courthouse's only public entrance was an improper jury communication. The large stone memorial states as follows:

"IN MEMORY OF AMERICAN WORKERS WHO HAVE

FALLEN FROM OUR RANKS DUE TO OCCUPATIONAL INJURY, ILLNESS AND DEATH. LET US RENEW OUR VOW TO PROVIDE SAFETY AND HEALTH, DIGNITY AND JUSTICE IN THE WORKPLACE. LET US RENEW THE CHALLENGE TO THOSE WHO WOULD DENY AMERICAN WORKERS THOSE BASIC HUMAN RIGHTS."

Adjacent to the stone memorial was a three-ring binder which contained injured peoples' names, including decedent's name and his date of death.

ADM argues the memorial's "undeniably political message--urging jurors to sympathize with injured workers and to punish those responsible--cannot be reconciled with the state's [*sic*] duty to assure justice is administered free from outside influence." According to ADM, "This type of court-sanctioned communication is presumptively prejudicial, particularly because the memorial referenced Garcia personally." ADM cites no authority in support of this statement. In addition, plaintiff argues ADM points to nothing in the record showing any juror knew decedent's name was in the three-ring binder adjacent to the stone memorial.

The cases ADM cites do not support its argument the presence of a monument outside the courthouse is presumptively prejudicial. Further, ADM offers no evidence or explanation how it was actually prejudiced. Additionally, ADM conceded liability for the accident, eliminating the need for the jury to consider and determine the wrongful nature of its conduct.

4. *Testimony of Kent Hadden Regarding Time of Accident*

ADM next argues the trial court erred in not allowing Kent Hadden's testimony

the accident in question in this case occurred at 12:03 p.m. and not 11:50 a.m. as argued by plaintiff. According to ADM, this caused an inflation in the amount of survival damages because it extended the period of decedent's pain and suffering by 13 minutes.

During ADM's direct examination of Kent Hadden, the following exchange occurred:

> "[ADM's Counsel]: When a P-trap breach occurs, are you able to document the time that that event takes place?
>
> [Hadden]: Yes.
>
> [ADM's Counsel]: And how is that done?
>
> [Hadden]: Based on some of the information that we look at on the MR we can see when the pressure increases and then you can see when it is released.
>
> [ADM's Counsel]: Were you able to determine that with respect to this event?
>
> [Hadden]: Yes.
>
> [ADM's Counsel]: What time did that event take place?
>
> [Plaintiff's Counsel]: Objection, Judge. Exceeds the scope of Rule 213.
>
> [Trial Court]: Any response?
>
> [ADM's Counsel]: Judge, we decided he would be called generally about the P-trap.
>
> [Plaintiff's Counsel]: To provide general information.

[Trial Court]: Overruled. You may inquire. You may answer, sir.

[ADM's Counsel]: What time did the P-trap, uh, based on your review of the records?

[Hadden]: Based on the trend that I saw, it was 12:03.

[ADM's Counsel]: That's all I have. Thank you."

Plaintiff's counsel then began his cross-examination of Hadden by asking where the records were he reviewed. Hadden answered it was evidence he looked at. Plaintiff's counsel objected, arguing those records had not been produced. ADM's counsel stated the records had been produced. A side bar then occurred. According to a bystander's report of this side-bar conference:

"Plaintiff's attorney read to the Court the language of the defense 213(f) Disclosure, Paragraph 7, referencing Kent Hadden as a potential witness. Defense Counsel acknowledged that Paragraph 7 said what it said but also stated the disclosure incorporated prior discovery responses which disclosed Kent Hadden as an occurrence witness and that Hadden was testifying to the reading of the equipment which is at issue in this case. Defense counsel also pointed out that the documentation upon which Hadden's testimony was based had been produced to Plaintiff's attorney. The Trial Court asked Plaintiff's counsel whether the 13 minute discrepancy was that important. Plaintiff's attorney

declared it was. The Trial Court then said the objection would be sustained and that he would instruct the jury to disregard Hadden's testimony and the side bar concluded."

The court then instructed the jury to disregard Hadden's testimony which described the event as occurring at 12:03.

ADM couches the trial court's instruction to disregard Hadden's testimony as a Supreme Court Rule 219 sanction. According to ADM, the trial court's "sanction is procedurally infirm" because the court did not set forth in writing with specificity its reasons for barring Hadden's testimony. In addition, ADM argues the "sanction" was unfounded because plaintiff had known about the subject matter of Hadden's testimony and the supporting documentation well before trial.

The record does not reflect this was a Rule 219 sanction. Instead, plaintiff argued Hadden was exceeding the bounds of defendant's Rule 213(f) witness disclosure. Rule 213(g) states:

"Limitation on Testimony and Freedom to Cross-Examine. The information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial. Information disclosed in a discovery deposition need not be later specifically identified in a Rule 213(f) answer, but, upon objection at trial, the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the discovery deposition." Ill. S. Ct.

R. 213(g) (eff. Jan. 1, 2007).

ADM makes no argument in its brief concerning Rule 213(g).

ADM argues plaintiff knew about the subject matter of Hadden's testimony and the supporting documentation before trial. ADM also points to the fact both plaintiff and ADM had identified Hadden as a witness expected to testify in their respective witness disclosures. Finally, ADM points to the fact it produced the machine-generated records on which Hadden relied to plaintiff.

We have reviewed the respective witness disclosures cited by ADM in its brief as well the machine-generated record referred to above. We do not see how either of these witness disclosures or the machine-generated record would have placed plaintiff on notice Hadden would testify the accident occurred at 12:03 p.m.

In essence, ADM wanted to introduce opinion testimony from Hadden, based on his review of records, the accident occurred at 12:03. ADM was attempting to use Hadden as an expert witness. "[A] trial court's decision regarding whether an opinion has been adequately disclosed such that it may be admitted into evidence is *** reviewed under the abuse of discretion standard." *Chapman v. Hubbard Woods Motors, Inc.*, 351 Ill. App. 3d 99, 110, 812 N.E.2d 389, 399 (2004). In this case, we find the trial court did not abuse its discretion in instructing the jury to disregard the portion of Hadden's testimony concerning the time of the accident because it does not appear, based on the record before us, ADM established it sufficiently complied with Rule 213(f) concerning Hadden's testimony.

5. *Cumulative Effect*

ADM argues the combined effect of the trial court's (1) exclusion of evidence

regarding Garcia's alleged illegal status and Hadden's testimony about the time of the accident, (2) failure to remove the workers' memorial, and (3) failure to properly instruct the jury, along with counsel's improper closing argument and repeated violations of the *in limine* order caused an inflated verdict and necessitate a new trial. Based on our above discussion of these issues individually, we disagree with ADM's assessment and find ADM received a fair trial.

C. Supreme Court Rule 222(b) Affidavit

ADM next argues the trial court should have reduced the judgment to $50,000 pursuant to Rule 222(b) because plaintiff did not file a Rule 222(b) affidavit with her initial complaint. We disagree.

Rule 222(b) states:

> "Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed $50,000. If the damages sought do not exceed $50,000, this rule shall apply. Any judgment on such claim which exceeds $50,000 shall be reduced posttrial to an amount not in excess of $50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial." Ill. S. Ct. R. 222(b) (eff. July 1, 2006).

ADM's argument calls on us to interpret the meaning of Rule 222(b). "When

interpreting a supreme court rule, we apply the same rules applicable to interpreting statutes" and a *de novo* standard of review. *Grady v. Marchini*, 375 Ill. App. 3d 174, 177, 874 N.E.2d 179, 181 (2007). The most important rule of statutory construction is to determine and give effect to the legislature's intent. *Grady*, 375 Ill. App. 3d at 177, 874 N.E.2d at 181. We give the terms of a statute their plain and ordinary meaning unless they are given a specific meaning in the statute. *Grady*, 375 Ill. App. 3d at 177, 874 N.E.2d at 182. Only when the meaning of a statute is ambiguous will we look beyond the plain language of the statute and resort to aids for construction. *Grady*, 375 Ill. App. 3d at 177, 874 N.E.2d at 182.

ADM relies on this court's decision in *Grady*, 375 Ill. App. 3d 174, 874 N.E.2d 179. As this court's decision in *Grady* appears to be the only opinion on this topic, we address it in some detail.

In *Grady*, the plaintiff filed a negligence action against the defendant, seeking damages in excess of $15,000. *Grady*, 375 Ill. App. 3d at 175, 874 N.E.2d at 180. The plaintiff designated the matter as a law magistrate (LM) case and did not attach an affidavit stating the damages did or did not exceed $50,000 as required by Supreme Court Rule 222(b) (Ill. S. Ct. R. 222(b) (eff. Jan. 1, 1996). *Grady*, 375 Ill. App. 3d at 175, 874 N.E.2d at 180. The plaintiff never filed a Rule 222(b) affidavit, the case proceeded to trial, and the jury awarded the plaintiff $97,700. *Grady*, 375 Ill. App. 3d at 175, 874 N.E.2d at 180. The trial court granted the defendant's motion to reduce the award to $50,000 pursuant to Rule 222(b). *Grady*, 375 Ill. App. 3d at 175, 874 N.E.2d at 180. The plaintiff appealed the reduction of the jury award.

On appeal, this court stated:

> "The language of Rule 222(b) is clear. A party *shall* attach

his or her affidavit, which states whether the damages *do or do not* exceed $50,000, to the initial pleading. Any judgment that exceeds $50,000 *shall* be reduced to $50,000 if the damages *sought did not exceed $50,000*. The use of the term 'shall' indicates a mandatory intent. [Citation.] While we recognize that use of the term 'shall' is not fixed or inflexible and that courts sometimes interpret it as directory [citation], it has also been stated that 'where a word is used in different sections of the same legislative act, there is a presumption that it is used with the same meaning throughout, unless a contrary legislative intent is clearly expressed' [citation].

The term 'shall' is used three times in Rule 222(b). Once when saying damages in excess of $50,000 *shall* be reduced to $50,000 and again when stating the affidavit *shall* not be used as evidence. We conclude 'shall' can be read no other way than as mandatory in these two contexts. Thus, the use of 'shall' in imposing an obligation on the party to file an affidavit with his or her initial pleading stating whether or not he or she is seeking damages in excess of $50,000 is likewise mandatory. *** We conclude she is precluded from recovering more than $50,000. Rule 222(b) requires the judgment be reduced to $50,000." (Emphasis in original and added.) *Grady*, 375 Ill. App. 3d at 178, 874 N.E.2d at 182-83.

When this language is read closely, this court's reduction of the jury award was based on two factors--the plaintiff's failure to file an affidavit and the amount of damages sought. This is clear by our language: "Any judgment that exceeds $50,000 shall be reduced to $50,000 if the damages sought did not exceed $50,000."

The plaintiff's actions in *Grady* signaled she was not seeking more than $50,000 in damages. This court noted:

> "[T]he complaint sought damages in excess of $15,000 and the case was docketed as an LM case. The 'definitions of court case types,' which was a supplement to the record, states: 'A Law Magistrate case number shall be assigned to *** actions in which the damages are $50,000 or less. The amount of damages contained in the complaint *** determine the category, not the amount of the verdict or judgment.' All pleadings had the case designated as an LM case; thus, this was a case seeking damages for $50,000 or less. We note the complaint was designated as an LM case and the "LM" was typed. *** Accordingly, we find it disingenuous for plaintiff to claim the circuit clerk of Champaign County provided the designation. This conclusion is supported by the fact she sought damages in excess of $15,000 in the complaint and not $50,000, the amount at which this case would have been give a 'Law case number.'" *Grady*, 375 Ill. App. 3d at 179, 874 N.E.2d at 183.

This court in *Grady* did not determine what the supreme court meant by "initial pleading" nor did it hold the failure to file a Rule 222(b) affidavit in a case seeking more than $50,000 would result in a reduction of a verdict greater than $50,000. Based on the plain language of Rule 222(b), the supreme court called for the reduction of verdicts greater than $50,000 only if the plaintiff's complaint was not seeking more than $50,000.

It appears the purpose of this portion of the rule is to protect a defendant who has proceeded through a case with the reasonable expectation, based on the plaintiff's filings, his damages would be capped at $50,000. In addition, unlike cases seeking more than $50,000, Rule 222 provides for limited and simplified discovery in an LM case. It would be unfair to hold the parties to limited discovery based on a plaintiff seeking less than $50,000 but allow a larger verdict to stand at the end of a case where a plaintiff had never indicated he or she was seeking a verdict in excess of $50,000. Contrary to ADM's argument, the supreme court did not intend to adopt a policy calling on trial courts to reduce to $50,000 all verdicts in excess of $50,000 based on a plaintiff's failure to attach an affidavit to the first complaint he filed in a particular case.

In this case, ADM had no reasonable expectation during any part of this case plaintiff was seeking only $50,000 in damages. Plaintiff's complaint filed on September 21, 2007, had two docket numbers handwritten in ink (Nos. 07-SC-374 and 07-L-142). However, ADM's counsel's entry of appearance and ADM's motion for judgment on the pleadings both listed docket No. 07-L-142. According to the Administrative Office of Illinois Courts' Manual on Recordkeeping, tort and wrongful-death actions seeking damages over $50,000 are given the "L" designation. Administrative Office of Illinois Courts, Manual on Recordkeeping, Part 1, Section C, at 2 (2d ed. 1996, rev. 2009). As a result, ADM cannot claim it had a reasonable

belief the plaintiff was seeking $50,000 or less.

Further, we also disagree with ADM's assertions our supreme court intended to bar a party from filing an affidavit as to damages if the plaintiff did not file one with their first complaint. Supreme Court Rule 2 states the Supreme Court Rules "are to be construed in accordance with the appropriate provisions of the Statute on Statutes (5 ILCS 70/00.01 *et seq.*), and in accordance with the standards stated in section 1-106 of the Code of Civil Procedure (735 ILCS 5/1-106)." Ill. S. Ct. R. 2 (eff. May 30, 2008). Section 1.01 of the Statute on Statutes states: "All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out." 5 ILCS 70/1.01 (West 2008). Section 1-106 of the Code of Civil Procedure states:

> "This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Act or to the rules made in relation thereto." 735 ILCS 5/1-106 (West 2008).

Giving Rule 222(b) a liberal construction in accordance with the dictates of Rule 2, we conclude our supreme court simply meant "complaint" when it said "initial pleading." This is in line with section 2-602 of the Code of Civil Procedure (735 ILCS 5/2-602 (West 2008)), which covers the designation and order of pleadings. Section 2-602 states: "The first pleading by the plaintiff shall be designated a complaint." 735 ILCS 5/2-602 (West 2008).

ADM's draconian construction of the rule that a party can never file an affidavit if

he did not file an affidavit with his initial complaint is not in line with the spirit of Rule 222(b), which states in part: "Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment." Ill. S. Ct. R. 222(b) (eff. July 1, 2006). In this case, ADM suffered no prejudice as a result of the court allowing plaintiff leave to file an amended complaint with an affidavit. Plaintiff's original complaint was filed on September 21, 2007. A motion to amend the complaint was filed on November 14, 2007, and the amended complaint with the affidavit was filed on December 7, 2007. The trial occurred in September 2009. Further, no formal discovery had started by December 2007 at the time the affidavit concerning damages was filed. (A discovery schedule was established by court order on February 10, 2009.) As a result, the trial court did not err in allowing plaintiff to file an amended complaint with affidavit.

D. Damages Award

ADM next argues the jury's verdict lacks support in the record, falls outside the range of reasonable compensation, and results from passion and prejudice. Our supreme court has stated:

> "The determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court. [Citations.] An award of damages will be deemed excessive if it falls outside the range of fair and reasonable compensation or results from passion or prejudice, or if it is so large that it shocks the judicial conscience."

*Richardson v. Chapman*, 175 Ill. 2d 98, 113, 676 N.E.2d 621, 628 (1997).

Our supreme court has also stated:

> "The very nature of personal injury cases makes it impossible to establish a precise formula to determine whether a particular award is excessive or not. [Citations.] Additionally, judges are not free to reweigh the evidence simply because they may have arrived at a different verdict than the jury." *Snelson v. Kamm*, 204 Ill. 2d 1, 37, 787 N.E.2d 796, 816 (2003).

1. *$1,945,000 Survival Award*

ADM argues the jury's award of $1,945,000 for pain and suffering, loss of normal life, and disfigurement is excessive. The reasons ADM gives for this assertion: decedent only survived for 32 hours after the accident and was only conscious for 70 minutes. ADM completely ignores in its brief the evidence the jury heard regarding decedent's experience in those 70 minutes.

Jose DeJesus Morones Moreno, decedent's cousin and co-worker at the ADM facility, testified he witnessed the accident at issue. A pipe exploded and decedent was thrown out of the lift cage in which he had been standing. Decedent was hanging outside the lift cage and steam and water continued to come down on him. Decedent was shouting and crying for someone to help him. Eventually, decedent was able to release himself from the safety harness, and he fell to the ground. Moreno testified he and Paul Williams grabbed decedent and put him in the safety shower. According to Moreno, decedent was very clearly in pain and he was

shaking very badly.

Moreno testified they took off decedent's clothing and his skin peeled off inside his clothes. As they took off his clothes, decedent was screaming, crying, and shaking. When decedent touched his face, his skin came off his face. Decedent was conscious and told Moreno, "I am not going to live."

The paramedics arrived between 15 and 18 minutes after the accident. Moreno testified decedent asked the paramedics for something for his pain, but the paramedics said they could not give him anything. Moreno rode in the ambulance with decedent to the hospital. Decedent was conscious the entire time and appeared to be in pain.

After decedent arrived at the hospital, Moreno testified he was able to speak with him briefly. Moreno testified decedent said he was not going to live. He wanted Moreno to tell his parents he loved them. Decedent was still screaming and in pain. Moreno testified he later saw decedent after he was transferred to St. John's Hospital in Springfield. Decedent was unconscious and his body was black.

Moreno also saw decedent after he had been transferred from St. John's Hospital to Memorial Medical Center. Moreno testified decedent looked like "a monster" and "was just incredibly ugly." Moreno described decedent as follows: "He was purple. He was like this. His lips were swollen and purple. He was a monster." Moreno also testified it looked like decedent was two times bigger than Moreno.

Paul F. Williams, Jr., testified he was decedent's supervisor and witnessed the accident. He testified decedent was screaming in pain. Williams testified he saw decedent without his shirt and pants after the accident and he was red and his skin was hanging off of his

face, his arms, and his legs. Williams gave his coat to cover decedent. When he got the coat back, it was covered in skin.

Edward Bradbury responded to the accident and helped with decedent. Bradbury described decedent as follows: "There was just raw flesh left. The skin had completely peeled off. So there was just raw flesh exposed." Bradbury testified decedent was conscious but contradicted the earlier witnesses testimony by stating decedent did not appear to be in pain but only shock.

Dr. Gerald Snyder testified he treated decedent in the emergency room at Decatur Memorial Hospital. He testified decedent was having a significant amount of pain.

Nurse Susan Dugger testified she provided nursing services to decedent. Dugger offered the following testimony:

> "[T]his was one of the worst things I had ever seen in my thirteen years there. Like I had documented was all of his skin was sloughed off because of the burns. He was riving [*sic*] as much as he could because the more he moved the more he hurt so he was trying very hard to hold still, he was trying very hard to, you know, listen to what we were telling him to try and relax and that we were trying to help him. ***
>
> [Plaintiff's Attorney]: Okay. Now, when you say he was "riving," [*sic*] what do you mean by that?
>
> [Dugger]: Just moving without real purpose, just trying to get away from the pain. You know, you move just to try and get

comfortable but there is just no way. There was no place to be comfortable.

[Plaintiff's Attorney]: Other than the patient telling you that he was in severe pain, was there anything about the patient that you were able to observe that led you to conclude he was in severe pain?

[Dugger]: Sure. The movements, the look on his face. I mean not only is he very afraid, you could tell by his eyes, he was very afraid but he is also just hurting as much as you can tell by somebody's facial expressions, his heart rate was high, he was restless. There was no place for him to be comfortable."

The jury awarded $45,000 for loss of normal life, $400,000 for disfigurement, and $1,500,000 for pain and suffering. Based on the above evidence, we are unable to find the jury's survival award was excessive.

2. *$4,680,000 Pecuniary-Loss Award*

ADM argues the jury's pecuniary-loss award was excessive because decedent's family members were neither close nor financially dependent on decedent. Section 2 of the Wrongful Death Act (740 ILCS 180/2 (West 2008)) states in part:

"In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, to the surviving spouse and next of

kin of such deceased person." 740 ILCS 180/2 (West 2008).

Illinois Pattern Jury Instruction, Civil, No. 31.06 states a jury may consider in determining pecuniary loss the money, goods, and services the decedent contributed in the past and was likely to have contributed in the future; the decedent's personal expenses, age, sex, health, and physical and mental characteristics; the decedent's habits of industry, sobriety, and thrift; the decedent's occupational abilities; the grief, mental suffering, and sorrow of his next of kin; and his relationship with his next of kin. Illinois Pattern Jury Instructions, Civil, No. 31.06 (Supp 2008).

Our supreme court has held parents are entitled to a rebuttable presumption of pecuniary injury for the loss of an adult child's society. *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 120, 499 N.E.2d 1373, 1379 (1986). However, siblings are not entitled to a presumption of pecuniary injury but must prove actual damages. *In re Estate of Finley*, 151 Ill. 2d 95, 103, 601 N.E.2d 699, 702 (1992).

While ADM interprets the evidence as showing decedent did not have a close relationship with his family, the jury obviously did not agree with ADM's interpretation. ADM cites *Mikolajczyk v. Ford Motor Co.*, 369 Ill. App. 3d 78, 859 N.E.2d 201 (2006), *vacated*, 223 Ill. 2d 638, 862 N.E.2d 1003 (2007), as support for it argument the pecuniary-loss award in this case cannot stand. However, we note Illinois courts have traditionally declined to compare damages awarded in one case to damages awarded in others in determining whether a particular award is excessive. *Richardson*, 175 Ill. 2d at 114, 676 N.E.2d at 628. We decline to do so in this case. We are unable to find the award of damages falls outside the range of fair and reasonable compensation, results from passion or prejudice, or is so large it shocks the judicial conscience. See *Richardson*, 175 Ill. 2d at 114, 676 N.E.2d at 628.

## III. CONCLUSION

For the above stated reasons, we affirm the trial court's judgment.

Affirmed.