SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Christine Gambino, et al.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2016 CA 001884 M
	:	Hon. Hiram E. Puig-Lugo
Medstar-Georgetown University Medical Center, Inc., Trading As Medstar Georgetown University Hospital	:	
	:	
Defendant.	:	

DEFENDANT'S OPPOSED MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, A NEW TRIAL OR REMITTITUR

The Defendant, MedStar Georgetown University Medical Center, Inc., through its attorneys, Gleason, Flynn, Emig, Fogleman & McAfee, Chtd., respectfully submits this Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur, pursuant to Rules 50 and 59 of the District of Columbia Superior Court Rules of Civil Procedure. In support thereof, Defendant states as follows:

1. Judgment notwithstanding the verdict should be granted in this case because Plaintiffs failed to properly qualify their standard of care experts and their experts failed to provide sufficient testimony to support a prima facie case of medical negligence.

2. Plaintiffs' failed to provide the appropriate testimony to support the optional portion of Standardized Civil Jury Instruction for the District of Columbia, No. 9-2.

3. The verdict rendered by the jury was so excessive compared to other, similar cases that it should be remitted.

WHEREFORE, Defendant respectfully requests the Court enter an Order granting its Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or

Remittitur.

Respectfully submitted,

GLEASON, FLYNN, EMIG, FOGLEMAN & MCAFEE, CHARTERED

/s/ Karen M. Cooke
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Attorneys for Defendant

REQUEST FOR HEARING

Defendant respectfully requests that the Court set a hearing for this post-trial motion.

/s/ Karen M. Cooke
Karen M. Cooke

CERTIFICATE UNDER RULE 12-I

The undersigned certifies that Plaintiffs' counsel was contacted in advance of filing this motion. Counsel indicated that they oppose any such motion.

/s/ Karen M. Cooke
Karen M. Cooke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2018, a copy of the foregoing Defendant's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur, Statement of Points and Authorities in Support thereof, and Proposed Order, was served via Case File Xpress and electronic mail on Patrick Malone, Esq. and Daniel C. Scialpi, Esq., 1310 L Street, N.W., Suite 800, Washington, D.C. 20005.

/s/ Karen M. Cooke
Karen M. Cooke

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STATEMENT OF POINTS & AUTHORITIES IN SUPPORT OF DEFENDANT'S OPPOSED MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, A NEW TRIAL OR REMITTITUR

The Defendant, MedStar Georgetown University Medical Center, Inc., through its attorneys, Gleason, Flynn, Emig, Fogleman & McAfee, Chartered, has filed a Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur, pursuant to Rules 50 and 59 of the District of Columbia Superior Court Rules of Civil Procedure. Defendant submits this Statement of Points and Authorities in further support of this motion.

I. FACTUAL BACKGROUND

The minor Plaintiff was born prematurely, at nearly 31 weeks' gestation, on January 2, 2013 in Defendant's hospital. The child was admitted to the neonatal intensive care unit ("NICU") and required peripheral intravenous ("PIV") therapy for nutrition, hydration, and medications. On January 15, 2013, the PIV was placed in the infant's right ankle. At 2:00 p.m. on January 16, 2013, Nurse Ellen Kim observed and documented "puffiness" at the IV site. By 3:00 p.m., she suspected an IV infiltration, and took appropriate steps to stop the PIV. The allegations of negligence focus on Nurse Kim's response when she observed puffiness at 2:00 p.m. As a result of the infiltration, the child suffered chemical burns which caused permanent scarring, foot and ankle deformities,

and a leg length discrepancy, which is expected to progress. The infiltration also caused pain and suffering from the tissue burns and the ensuing treatment. She will require future treatment as she grows.

II. ARGUMENT

Defendant moves for judgment notwithstanding the verdict pursuant to Super Court Civil Rule 50 or, in the alternative, a new trial or remittitur pursuant to Rule 59.

A. Plaintiffs Failed to Properly Qualify their Standard of Care Experts.

Medical malpractice cases require plaintiffs to establish the required elements of their case through expert testimony. *Cleary v. Group Health Ass'n*, 691 A.2d 148, 153. Plaintiffs bear the burden of demonstrating their experts' familiarity with the national standard of care. *Cardenas v. Muangman*, 998 A.2d 303, 307 (D.C. 2010) ("the plaintiff's experts, and only the plaintiff's experts, also have to hurdle the higher threshold: the burden of proving the national standard of care by a preponderance of the evidence.").

In *Hawes v. Chua*, 769 A.2d 797 (D.C. 2001) the Court of Appeals discussed the differences between the requirements for *admissibility* of an expert's testimony as to the national standard of care and the *sufficiency* of any such testimony. Regarding admissibility, the Court explained that all standard of care testimony in a case alleging medical negligence requires "the grounded reference to a national standard of care." *Id.* at 806. The appellate court also provided three factors to determine the admissibility of standard of care testimony: (1) merely saying words "national standard of care" insufficient; (2) "such testimony may not be based upon the expert's personal opinion, nor mere speculation or conjecture"; and (3) "testimony must reflect some evidence of a national standard," which can include attending national conventions or published materials. *Id.* A trial judge is afforded "wide latitude" when deciding whether to admit expert

testimony. *Id.* at 801. "Nevertheless, the judge's discretion is not without constraints." *Id.* The trial court's decision to admit expert testimony "must be based upon correct legal principles." *Id.* (internal citation omitted).

1. Nurse Gardner, R.N.

Plaintiffs' nursing expert, Sandra Gardner, RN, MS, failed to express familiarity with the national standard of care for the issues specific to this case prior to the trial court's acceptance of her as "an expert in NICU nursing and neonatal IV infiltrates." *See* Ex. 1 at 19:9-11 (10/30/18). Although Nurse Gardner testified that she does "all-day conferences," that is insufficient. *Id.* at 9:13 (10/30/18). *Travers v. District of Columbia,* 672 A.2d 566 (D.C. 1996)(attendance at meetings across the country insufficient without more). While she performs "blind review editing for two of [*sic*] neonatal journals," there was no testimony relating this to the issues for this case. *Id.* at 9:24-25 (10/30/18). Although she is also one of two editors for a handbook on neonatal intensive care, Merenstein and Gardner's Handbook of Neonatal Intensive Care, there was no testimony that her textbook was peer-reviewed or distributed nationally. *Id.* 10:7-24 (10/30/18). She also belongs to several nursing associations, but once again this did not relate to any case specific issues. *Id.* 12:8-14 (10/30/18).

After a bench conference, Plaintiffs asked Ms. Gardner if she is familiar with "the standards of care for NICU's." *Id.* at 13:20-22 (10/30/18). She testified that she is familiar with "those standards" from editing her textbook, being a member of the nursing organizations, and reading journals "cover to cover." *Id.* at 14:1-12(10/30/18). Importantly, however, she also testified that nurses are held to *three different* standards of care: (1) national standard; (2) state standard; and (3) local standard. *Id.* at 14:23 – 15:10. By providing her familiarity with multiple standards of care, Nurse Gardner's testimony could only serve to confuse the jury about which standard of care

applied to the facts of this case. This is exactly what is meant to be avoided with the legal principles established by the Court of Appeals. *Nwaneri*, 931 A.2d at 466 ("The purpose of expert testimony is to avoid jury findings based on conjecture or speculation.").

Nurse Gardner's qualifying testimony also did not in any way express her familiarity with the national standard of care as to the specific conduct at issue in this case: when Nurse Kim should have recognized the infiltration and when the IV line should have been removed. *Ferrell v. Rosenbaum*, 691 A.2d 641, 648 (D.C. 1997). ("the issue is whether the expert is qualified *concerning the particular procedure about which he is testifying.*") *Id.* at 648-49 (emphasis added). Because Plaintiffs failed to qualify her as knowledgeable about the national standard of care governing the specific issues in this case, her testimony should not have been permitted to be presented to the jury.

2. Marcus Hermansen, M.D.

Marcus Henderson, M.D., also failed to establish his familiarity with the national standard of care. Instead, he testified that he was "familiar with what nurses are expected to do in monitoring IV lines" because it has "been taught to [him] throughout [his] entire career" and has "been the policy at every hospital [he's] been at." *See* Ex. 2, Hermansen testimony, at 55:16-22. Such testimony is insufficient under binding District of Columbia case law because Dr. Hermansen's practice has been limited to New Hampshire. *Travers v. District of Columbia, supra* (discussion of case related issues with five or six local fellow surgeons insufficient).

Dr. Hermansen testified during qualification that he edited a book in which he wrote a chapter "called complications of IV therapy." *See* Ex. 2 at 56:13-15. Asked if that chapter summarizes "standards of practice that nurses and doctors are following on preventing injuries from IV lines," Dr. Hermansen responded, "I think so. That was written a few years ago. Maybe

roughly ten years ago. I don't remember but I have looked at it recently and there's nothing in it I'd change. It's held up pretty well." *Id.* at 57:4-11. This violates one of the three criteria established by *Hawes*, *supra*, prohibiting expert testimony based on the expert's personal opinion. 769 A.2d at 806. Dr. Hermansen never established that his publication has been nationally or even widely accepted amongst other practitioners in his field. Thus, he never established that his publications rise above the level of his own personal opinions.

In *Messina v. District of Columbia*, 663 A.2d 535, 538-39 (D.C. 1995), the expert at issue provided testimony which included a chart showing the results of his own research. *Id.* He "testified that the chart had been published many times, but he did not say when the tests were performed or when or where the chart had published." *Id.* Affirming the trial court's directed verdict, the appellate court explained: "While Hogan relied on the chart he developed, there was no evidence that it constituted any kind of national standard, that it had been promulgated, or was generally known, before Karyne was injured." *Id.* at 539. The same can be said of Dr. Hermansen's testimony. Although he testified about his own publications, he never connected these publications in any way to establish for the jury what constitutes the national standard of care in the context of this case or his familiarity with it.

Because neither of Plaintiffs' standard of care experts were properly qualified to provide standard of care testimony, Plaintiffs failed to establish a prima facie case of medical negligence. Accordingly, this Court should grant judgment as a matter of law notwithstanding the verdict.

B. The Testimony of Plaintiffs' Experts Also Failed to Meet the District of Columbia's Sufficiency Requirements.

1. When Establishing The Existence Of A National Standard Of Care, The Expert Must Demonstrate An Independent Basis For The Expert's Opinion.

The Court of Appeals has held that to establish the existence of a national standard of care

the expert must "link" his or her opinion about what the national standard of care requires to a certification process, medical literature, conferences, or discussions with other knowledgeable professionals. *See, e.g., Strickland v. Pinder,* 899 A.2d 770, 774 (D.C. 2006).

The case of *Strickland v. Pinder, supra,* is illustrative. While there was no issue regarding the qualification of the plaintiff's expert, Dr. Stark, the defendant moved to strike the expert's testimony and for judgment on grounds that the expert failed to establish an independent basis for his knowledge of the national standard of care. The trial court granted the motion, and the Court of Appeals affirmed. The Court of Appeals observed, "...Dr. Stark made no attempt to link his testimony to any certification process, current literature, conference or discussion with other knowledgeable professionals, any of which would have established a basis for his discussion of the national standard of care." *Strickland,* 899 A.2d at 774; *see also Nwaneri v. Sandidge,* 931 A.2d 466, 473 (D.C. 2007) ("Absent testimony from Dr. Woratyla regarding the basis for his national standard of care testimony, there was an insufficient basis for the trier of fact to reasonably infer what his testimony was based on, and the trial court was left to speculate"); *Hill v. Medlantic,* 933 A.2d 314, 319 (D.C. 2007) ("We conclude that appellant's expert, though initially qualified as an expert, failed to provide a basis for his knowledge of national standard of care ... We require that an expert provide an independent basis for his knowledge of the applicable national standard of care ... Absent such a basis and linkage, the expert would simply be providing a personal opinion as to the course of treatment he would have taken in treating the patient. This is insufficient for a medical malpractice case").

2. An Expert Witness Must "Link" Any Opinion That A Defendant-Physician Has Departed From the National Standard Of Care To An Objective Source Supporting The Opinion.

Similarly, when an expert testifies that a physician has violated a national standard of care,

the expert must provide an independent basis for the opinion which references the medical literature, professional meetings, or some other objective source supporting the opinion that a physician has departed from the national standard of care. *Nwaneri v. Sandidge, supra* (Dr. Woratyla's failure to establish an independent basis for his opinion that physician fell beneath national standard of care through reference medical literature, meetings and the like rendered plaintiff's case legally defective); *Hill v. Medlantic, supra* (Failure to show that there was independent basis supporting opinion that physician violated standard of care).

3. The Plaintiff Did Not Link Their National Standard of Care Testimony Or Provide An Independent Basis For Their Opinions.

Dr. Hermansen and Ms. Gardner did not link their national standard of care testimony to objective sources. Their only testimony that attempted this related to their own publications, which were never verified to reflect a national standard of care. *See Messina, supra.*

C. The Court Erred By Giving the Enhanced Jury Instruction as Announced in *Pannu v. Jacobson*

Over Defendant's objection, the Court read the following optional language to the jury:

> A reasonable professional under the standard of care changes his or her conduct according to the danger he or she knows, or should know, exists. Therefore, as the danger increases, a reasonable professional under the standard of care acts in accordance with those circumstances.

Standardized Civil Jury Instruction for the District of Columbia, No. 9-2 (05/2018 ed. rev.).[1] In its argument, Defendant explained that even the majority opinion in *Pannu* worried that some of the language analyzed in the case "imports a reasonable-person standard rather than a professional liability standard."[2] Ex. 3 at 12:20-23. This Court found as to the *Pannu* modification that "the

[1] This language is based on the holding in *Pannu v. Jacobson*, 909 A.2d 178 (D.C. 2006).

[2] *Pannu* involved very specific facts arising out of spinal surgery. During the surgery, "Dr. Jacobson inadvertently nicked the dura." *Id.* at 181. Ultimately, while drilling during the surgery, Dr. Jacobson

language they used sort of addresses the first concern regarding confusing the jury as to how it was to determine the standard of care." Ex. 3 at 15:21-23. Defendant respectfully disagrees. Nowhere in the majority opinion did the *Pannu* Court address how their proposed modified language would alleviate their concerns about jurors' confusion over a heightened standard of care in the context of a medical malpractice case. The dissent explored this very issue.

> Any reaction to increased danger is for the medical community, not this court, to define as reasonable within the standard of care. ....Indeed, a review of all of the cases citing [*D.C. Transit Sys. Inc v.*] *Carney*[, 254 A.2d 402 (D.C. 1969)] – and there are many – shows not one involving professional negligence of this type. Rather, the cases where increased danger has been discussed have been primarily those addressing the duty of care owed by common carriers to passengers[ ] – cases in which jurors are generally deemed competent to decide whether there has been a deviation from the standard of care without the assistance of expert testimony.

Id. (Kramer, J., dissenting) at 201-02. This struggle addressed even by the majority opinion, underscores the need for this optional portion of the standard jury instruction to be used sparingly and only when the Court is faced with unique facts not presented in the instant case.

The "danger" at issue in this case was unknown until Nurse Kim documented puffiness at 2:00 p.m. on January 16, 2013. The experts in this case did not testify that as the danger increased over the next hour until the infiltration was identified, Nurse Kim should have adjusted her conduct, for example, by performing more frequent monitoring on the area. Rather, Plaintiffs' experts testified that once puffiness was observed, the IV should have been pulled and another site located. *See* Ex. 1 at 67:12 – 69:9; *see also* Ex. 2 at 76:17 – 77:16. This constitutes the same type

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"encountered a piece of bone of uneven consistency, which caused the drill to jump and land in the dural sac between the bone and the cottonoid near the area which had already been torn." *Id.* at 181-82. As a result, Dr. Pannu suffered a permanent loss of bladder and bowel function. *Id.* at 182. Based on these facts, one of the experts testified that "the closer you get to the dura, the more careful you have to be and the more likely you are to have an injury." *Id* at 183.

of testimony as in any medical malpractice case, arguing that once "X" (i.e., puffiness) was observed, then "Y" action (i.e. removing the IV from the right ankle site) should have been performed. Under the theory of Plaintiffs' experts, the danger would not have been steadily increasing such that Nurse Kim had to "change" her conduct as the instruction read to the jury states. Accordingly, it is not applicable to the facts of this case and this heightened standard of care instruction should not have been provided to the jury.

D. There Was An Inadequate Foundation For Ms. Gardner's Opinion About The Volume Of The IV Infiltration.

Based on photographs taken the day after the IV infiltration, Ms. Gardner testified over objection to her opinion that thirty milliliters of IV solution infiltrated on the afternoon of January 16th. Her testimony, however, was not based on any recognized scientific, medical, or nursing methodology. *Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016). Consequently, Ms. Gardner's testimony was misleading and permitted the Jury to speculate, and the trial court should grant a new trial.

E. Alternatively, the Court Should Significantly Remit the Verdict.

Although discretionary, "[i]t is well settled that when a jury verdict is excessive the trial court may grant remittitur." *Williams v. Vel Ray Props., Inc.*, 699 A.2d 416, 418 n.1 (D.C. 1997) (internal citations omitted). While evaluating a request for a new trial or remittitur, "[t]he trial court must consider whether the 'verdict resulted from passion, prejudice, mistake, oversight, or consideration of improper elements' or whether it is 'beyond all reason, or … so great as to shock the conscience'." *District of Columbia v. Watkins*, 684 A.2d 395, 404 (D.C. 1996)(citations omitted). The Court of Appeals has clarified that the test is whether the verdict 'is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may

properly operate.' *Capitol Hill Hosp. v. Jones*, 532 A.2d 89, 93 n. 13 (D.C. 1987)(quoting *Phillips v. District of Columbia*, 458 A.2d 323, 724 (D.C. 1983)); *see also George Washington University v. Lawson*, 745 A.2d 232, 330 (D.C. 2000). A nearby jurisdiction has concluded that "[r]emittitur is an accepted procedure to correct an excessive jury award without necessitating the expense and delay of a new trial. As such, it is an integral and encouraged part of the trial process." *Icano v. St. Peter's Med. Ctr.*, 760 A.2d 348, 352 (N.J. 2000) (internal citation omitted)(remitting $1.5 million verdict to $500,000 in case arising out of IV infiltration).

1. Comparable Verdicts from Multiple Jurisdictions Demonstrate that the Verdict in this Case Is Excessive.

Although the Court of Appeals has cautioned that verdicts in similar cases are not to "be measured strictly on a comparative basis," consideration of "other awards may be helpful." *District of Columbia v. Hawkins*, 782 A.2d 293, 305 (D.C. 2001) (quoting *Capitol Hill Hosp. v. Jones*, 532 A.2d 89, 93 (D.C. 1987)). Defendant was unable to locate any cases in which a jury awarded in excess of $3 million for an intravenous infiltration injury. *See generally*, Ex. 4, compilation of relevant jury verdicts. Instead, Defendant located the following similar cases: (1) *Prouphet v. St. Luke's Episcopal-Presbyterian Hosp.*, 1995 WL 17007834 (Nov. 8, 1995) (six-month-old suffered tight heel cord requiring corrective surgery from IV infiltration; St. Louis, Missouri jury awarded $400,000)[3]; (2) *Simpson v. Grady Mem'l Hosp.*, 1988 WL 369054 (May, 1988) (at birth, patient required IV and suffered "large area of infiltration" requiring "extensive surgery" resulting in permanent scarring; Delaware County, Ohio jury awarded $175,000)[4]; (3)

[3] According to one inflation calendar, $400,000 in 1995 is equivalent to $658,714.16 in 2018. All 2018 calculations taken from web site replacing the dollar amount and year as in the example for this case: https://www.dollartimes.com/inflation/inflation.php?amount=400000&year=1995

[4] Two case synopses exist in Exhibit 5 for this case because one included the date and the other provided a more detailed description of facts, which are remarkably similar to the instant case. *See* Ex. 4 at 3-6.

Faneite-Pinckney v. Saintonge, 2002 WL 32374247 (June, 2002) (IV infiltration in right calf resulting in muscle injury, scarring, and limp with future surgery required; New York state jury awarded $1.2 million in non-economic damages)[5]; (4) *Arnoux v. The New York Hosp.*, 2003 WL 26081681 (June 1, 2003) (minor child suffered "equivalent of a third degree burn to her right leg" as a result of IV infiltrate; Kings County, New York jury awarded $950,000 for past and future pain and suffering)[6]; (5) *C.N. v. Hutzel Hosp.*, 2009 WL 2414348 (April 9, 2009) (premature infant suffered IV infiltration resulting in left thigh vascular damage and corrective surgery which left her with limited movement of leg, limp, and scarring; Wayne County, Michigan jury awarded $750,000 for pain and suffering)[7]; (6) *Mora v. Wyckoff Heights Med. Ctr.*, 2007 WL 7953522 (December 4, 2007) (premature infant plaintiff suffered IV infiltration of TPN up to two hours resulting in second degree burn to forearm and deep irregular scar; Kings County, New York jury awarded $290,000 verdict)[8]; (7) *Wallen v. Cuyahoga County Hosp.*, 1991 WL 11806889 (November 1, 1991) (newborn suffered full thickness burn from IV infiltration; Ohio jury awarded $90,000)[9]. *See generally* Ex. 4.

A review of these verdicts demonstrates that the verdict in this case more than doubles the next closest verdict of the similar cases located by Defendant, even when one accounts for inflation since the timing of all of these verdicts. "[I]f it should be so clearly apparent that the jury have

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$175,000 in 1995 is equivalent to $373,844.89 in 2018.

[5] $1.2 million in 2002 is equivalent to $1,674,186.76 in 2018.

[6] Despite the discrepancy in the date of verdict, Defendant believes that this is the same case as the anonymous "Plaintiff v. Defendant" case, which appears directly behind it in Exhibit 4. *See* Ex. 4 at 10-13. The portion of the award specific to pain and suffering damages, $950,000 in 2003 is equivalent to $1,294,625.76 in 2018.

[7] $750,000 in 2009 is equivalent to $879,487.98 in 2018.

[8] $290,000 in 2007 is equivalent to $354,271.36 in 2018.

[9] $90,000 in 1991 is equivalent to $165,823.32 in 2018.

committed a gross error, or have acted from improper motives, or given damages excessive in relation to the person or the injury, *it is as much the duty of the court to interfere, to prevent the wrong,* as in any other case." *Louison v. Crockett*, 546 A.2d 400, 406 (D.C. 1988) (emphasis in original) (internal citation omitted).

Defendant located only two cases involving IV infiltration in the District of Columbia. *See Johnson v. District of Columbia*, 1994 WL 547265 ($1.2 million verdict following IV amputation resulting in amputation of one arm)[10] and *Rowe v. Providence Hosp.*, 2014 WL 3586634 ($400,000 verdict following an infiltration resulting in, *inter alia*, necrotic tissue and scarring), both attached hereto Ex. 5.[11] Again, neither of these verdicts come close to $3.6 million.

2. The Verdict Was the Product of Passion and Prejudice Resulting, in Part, from the Comments of Plaintiffs' Counsel, Which Improperly Anchored the Verdict.

Prior to trial, Defendant argued that the Court should exercise the discretion afforded it under *District of Columbia v. Colston*, 468 A.2d 954 (D.C. 1983), and preclude Plaintiffs from anchoring the jury's verdict by suggesting a dollar amount or monetary range. Plaintiffs opposed the Defendant's position with the following acknowledgement of the Court's remittitur power:

> And then the final point I'll make is that if there was any problem in, in what we said in closing, *you have the final word on that through your remittitur power*, if the jury was to go wild with something. ...but I think counsel has to be free...to make some suggestion of reasonable value.

Ex. 6 at 55:19 – 56:5 (emphasis added). At trial, Plaintiffs introduced no evidence whatsoever of the economic damages. Instead, they submitted the case to the jury entirely on noneconomic damages. Contrary to Counsel's pretrial assertion that Plaintiffs must "be free to make some

[10] $1.2 million in 2002 is equivalent to $2,029,004.12 in 2018.
[11] $400,000 in 2014 is equivalent to $423,128.18 in 2018.

suggestion of reasonable value," Plaintiffs suggested during closing argument a dollar amount in the "high seven figures" to the jury, which far exceeded numerous verdicts for similar injuries. Ex. 3 at 81:6-7.

Plaintiffs' suggestion to the jury did not represent a "reasonable value," as the majority of cases involving IV infiltration in infants returned verdicts closer to $1 million, with many falling below that figure. Consequently, the verdict in this case, $3.6 million, so far exceeded the verdicts issued in so many other similar cases that the Court is well within its discretion to issue an Order of Remittitur. Thus, Defendant urges this Court to utilize its remittitur power just as Plaintiffs argued it could in the event that the jury exceeded the bounds of reasonableness. *See Bond v. Ivanjack,* 740 A.2d 968 (D.C. 1999)(affirming remittitur from $2.2 Million to $1.5 Million in case related to failure to diagnose cancer in twenty one year-old woman).

WHEREFORE, Defendant respectfully requests the Court enter an Order granting Judgment or, in the alternative, an Order remitting the verdict or granting a new trial.

Respectfully submitted,

GLEASON, FLYNN, EMIG, FOGLEMAN & MCAFEE, CHARTERED

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Medical Center, Inc., trading as	:	
MedStar Georgetown University Hospital	:	
	:	
Defendant.	:	

ORDER

Upon consideration of Defendant's Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur, and any opposition/response thereto, and the entire record herein, it is this _____day of _____, 2018

ORDERED that Defendants' Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur is GRANTED, and it is further

ORDERED that judgment as a matter of law is entered in favor of the Defendant and against the Plaintiffs.

_____
The Honorable Hiram Puig-Lugo

Copies to:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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ORDER

Upon consideration of Defendant's Motion for Judgement Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur, and any opposition/response thereto, and the entire record herein, it is this _____day of _____, 2018

ORDERED that Defendants' Motion for Judgement Notwithstanding the Verdict or, in the Alternative, a New Trial or Remittitur is GRANTED, and it is further

ORDERED that Defendant's Motion for New Trial is GRANTED unless Plaintiffs elect, within ___ days of this Order to accept a lesser verdict in the amount of $_____.

_____
The Honorable Hiram Puig-Lugo

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