

**COMMONWEALTH OF KENTUCKY
BARREN CIRCUIT COURT
CIVIL ACTION NO. 13-CI-00487**

VELMA DECKER, et al.

PLAINTIFFS

v.

GREG MEREDITH, et al.

DEFENDANTS

v.

SCOTTY'S CONTRACTING AND STONE, LLC and
VANMETER CONTRACTING, INC.

THIRD-PARTY DEFENDANTS

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

This action concerns a tragic highway construction accident that occurred on October 8, 2012. It has been vigorously litigated. On April 23, 2021, the Court granted Plaintiffs' motion for entry of a consent judgment, and on April 30, 2021, a Consent Judgment, Assignment, and Forbearance was entered by agreement between Plaintiffs and Defendants. Plaintiffs are seeking an award of damages as provided in *Associated Ins. Service, Inc. v. Garcia*, 307 S.W.3d 58 (Ky.2010).

Under the procedure contemplated by *Garcia*, the Court may determine the existence and amount of compensatory damages for each Plaintiff, and to ascertain whether punitive damages are warranted. Because Defendants filed a notice on November 16, 2022 that they were no longer actively participating in the case, a bench trial was held and Plaintiffs introduced evidence concerning their claims.

The Court heard evidence regarding the claims as follows:

- 1) The wrongful death of Kenneth Decker;
- 2) Velma Decker's loss of consortium;

- 3) John McIntosh's damages;
- 4) Jamie Groce's damages;
- 5) Steve Nelson's damages;
- 6) Linda Nelson's loss of consortium; and
- 7) Punitive damages for the gross negligence of the Defendants, if any.

At the trial, the Court heard testimony from various witnesses, including Dr. Harold Deathredge, an expert on highway construction and safety (hereinafter "Deathredge"); family members of various Plaintiffs; and Plaintiffs themselves. Further, the Court has received and reviewed numerous exhibits, including depositions and demonstrative exhibits. In full consideration of the foregoing, the Court makes the following Findings of Fact, Conclusions of Law, and Judgment.

GENERAL FINDINGS OF FACT

1. On October 8, 2012, Kenneth Decker, Jamie Groce, Steve Nelson, and John McIntosh were working for VanMeter Contracting, Inc., (hereinafter VanMeter). They were building a retaining wall and were atop the wall while concrete was being poured into a metal form.
2. The form was improperly secured in violation of several standards. As a result, it collapsed or rolled over. In so doing, Kenneth Decker was killed. Jamie Groce, Steve Nelson, and John McIntosh all were thrown to the ground and sustained severe, disabling, and permanent injuries.
3. At the time of this incident, Velma Decker was married to Kenneth Decker, and Linda Nelson was and still is married to Steve Nelson.
4. Defendants Greg Meredith, Daryl Price, Kevin Gerald, Ashley Graves, Thomas Lapham, Mark Love, and Jon Lam worked in the Kentucky Transportation Cabinet Department of Highways. Meredith was the chief district engineer; Price and Gerald were transportation

engineering branch managers; Lapham was a transportation engineering technologist; Love, also a transportation engineering technologist, is now deceased, and his estate has been substituted as a party to this case; Graves was a transportation engineer supervisor; and Lam was the safety coordinator. Meredith, Price, Gerald, and Graves are licensed engineers.

5. Dr. Harold Deathredge testified on behalf of Plaintiffs. Based on his resume, his considerable experience in highway construction, his academic training, and his experience in forensic investigations of construction incidents, he is qualified to give expert opinions in this matter.

6. In his position of authority at the Kentucky Transportation Cabinet Department of Highways District 3 office, Meredith was responsible for all state highway construction projects in the ten-county district that includes Barren County. The remaining individual Defendants had safety responsibilities with respect to, *inter alia*, the project at the heart of this case.

7. The project was subject to three sets of mandatory standards: OSHA regulations, the Kentucky Standard Specifications for Road and Bridge Construction (the Standard Specifications), and the Kentucky Construction Guidance Manual (CGM).

8. According to the evidence, all Defendants in this matter were obligated to comply with the applicable construction standards. The Court has previously recognized those standards as controlling in its Order Concerning Summary Judgment dated April 18, 2016, which was affirmed in part as stated in *Meredith et al. v. Decker et al.*, 2016-CA-000721. Meredith also acknowledged, during pretrial discovery, the applicability of those standards. Further, Deathredge testified that the standards are mandatory.

9. Highway construction is among the most dangerous occupations in the United States. The OSHA regs, the Standard Specifications, and the CGM are designed to protect against known

highway construction hazards by establishing an engineering methodology so contractors and subcontractors can safely perform the work.

10. All Defendants were obligated to enforce the applicable standards, as Meredith acknowledged.

11. Contractors and subcontractors on this project were required to strictly comply with the standards. Meredith testified that all Defendants had the authority to stop work on the project if they observed unsafe conditions.

12. The duties imposed on Defendants according to the above standards cannot be delegated to contractors and subcontractors.

13. The proof identified five primary failures on this project:

- a. Failure to enforce strict compliance with applicable safety procedures as mandated by the Standard Specifications 107.01 and 107.01.01; CGM at CST-102, CST-104, and CST-105-1;
- b. Failure to require certified engineering plans before allowing work to proceed on the retaining wall, which was required by the Standard Specifications at 613.03.01;
- c. Failure to enforce OSHA regulations regarding the shoring of retaining walls per CGM at CST-1302; 803 KAR 2:416; and 29 CFR 1926.703;
- d. Failure to inspect anchoring before allowing the wall to be poured, as required by the Standard Specifications at 601.03.12(A); and
- e. Failure to ensure that VanMeter had competent personnel on site to make certain that the retaining wall was being safely constructed according to standards.

14. Deathredge credibly testified that the absence of telescoping poles and concrete shoring constituted a failure to properly anchor the retaining wall and made the failure an “engineering certainty.”

15. About five months before the collapse of the retaining wall, VanMeter’s negligence contributed to a similar accident involving the complete failure of the top of a concrete culvert. In an April 8, 2013 e-mail, Price stated, “We have had trouble getting this contractor to safe up projects many times. We have already had trouble with this same contractor on another bridge lately.”

16. The Daily Work Reports (DWRs) compiled by Defendants for the month or so prior to the wall collapse do not reflect that any Defendant performed compliance or safety inspections or otherwise enforced the relevant standards during that period. These DWRs reflect that Graves was not on site at all during the preceding month, and Geraldts was on site on September 4, 2012 only. There was no retaining wall activity on that date. In addition, Plaintiff Steve Nelson testified that he never saw any Defendant on scene performing any safety activities while the retaining wall was being constructed.

17. OSHA cited the Kentucky Transportation Cabinet and VanMeter. OSHA found that Lapham, Geraldts, and Love were on site on October 8, 2012 and witnessed several imminent danger violations, including inadequate fall protection and inadequate trenching/cave-in protection, but did not halt work despite a requirement that they do so. Nor did they perform any inspection that would have made the absence of anchoring on the retaining wall form obvious.

18. Plaintiffs’ expert, Dr. Harold Deathredge, was highly critical of Defendants’ actions. His testimony was reasoned and, based on his extensive expertise, credible.

19. Deathredge testified that he had never seen such an “egregious dereliction of duty.” He stated that Defendants demonstrated a “callous disregard” for the applicable safety regulations, the contract specifications, and the Standard Specifications.

20. The type of retaining wall at issue is poured in sections from overhead into a metal form that is supposed to be anchored in place. Once the concrete cures, the forms are removed and reset to pour another section of the wall. Workers are on top of the form to direct the pour and finish the concrete.

21. Because of the danger involved in building these walls, there are extensive safety mechanisms involved. The anchoring requirements include bolting, as well as telescoping poles fixed to the exterior of the form and bolted to heavy concrete blocks. If these anchors are not appropriately placed, the hydrostatic pressure exerted by the concrete on the form causes an uplift that floats the entire structure and results in a rollover.

22. There was an almost complete absence of the appropriate anchoring in this case, which caused the wall to fail and collapse.

23. Deathredge testified that Defendants all failed to comply with the mandatory actions required in the applicable standards, and they failed to ensure that VanMeter had competent personnel on site during construction of the wall.

24. The failure to enforce strict compliance with safety laws, rules, and regulations was a substantial contributing factor to the collapse of the wall.

25. Under Standard Specification 613.03.01(4), “no materials are to be furnished and no fabrication or work done before the Department’s review of the proposed design, drawings, and instructions.” Such plans are prepared by a licensed engineer and are then certified or “sealed” by the engineer with a stamp. Defendants failed to see that “sealed” plans were present before work

commenced on the wall. Deathredge stated that the absence of such plans should have immediately halted the project. The failure to make certain that there were certified/sealed engineering plans before allowing work to proceed on the retaining wall was a substantial contributing factor to the collapse of the wall.

26. Failure to enforce regulations was a substantial contributing factor to the collapse of the wall. In fact, the anchoring deficiencies made collapse a “near engineering certainty.”

27. Any inspection would have made the absence of proper anchoring apparent, at which point work should have been halted. That Defendants failed to inspect the anchoring before allowing the wall to be poured was a substantial contributing factor to the collapse of the wall.

28. Deathredge stated that VanMeter’s designated supervisor on site, Linden Lipe, was “obviously incompetent.” Lipe had never worked on a gravity wall before; had never received training on the safe installation of retaining walls; did not recall if he had OSHA/safety training; allowed concrete to be poured although he was never provided with any plans for the wall; and never consulted with Defendants about the wall.

29. Defendants failed to ensure that VanMeter had competent personnel on site who were qualified to assure that the retaining wall was being safely constructed, which failure was a substantial contributing factor to the collapse of the wall.

30. Deathredge also testified about an April 8, 2013 email written by Price as follows: “Thought it was decided not to contest. We had inspectors nearby on the project. I think we should get reimbursed for the fine by the contractor who is doing the work. If a contractor gets a fine more than two or three times or more then they should be banned from State work for a period of time. We have had trouble getting this contractor to safe up projects many times. We have already had trouble with this same contractor on another bridge lately.” This correspondence demonstrates

Price's awareness that VanMeter was an unsafe contractor, yet it was permitted to work on highway construction projects anyway. Price had the authority to ban VanMeter from continuing until it complied with a safety plan but did not do so.

31. Deathredge testified that the email is evidence of "a reckless disregard for making sure you have a safe job being built" and indicative of a "callous indifference" toward safety. Defendants' failure to supervise and to ensure compliance with safety regulations constituted a breach of the duty of care and is inexplicable in light of the knowledge of VanMeter's shortcomings.

32. Deathredge also explained that other acts and omissions showed an indifference to safety:

- a. Lapham, Gerald, and Love observed imminent danger OSHA violations on the day of the collapse, yet did nothing. Had they stopped work on the project, an inspection of the retaining wall form would have resulted and made its lack of anchoring obvious;
- b. The DWRs for the 30 days before the wall collapse do not record any examples of compliance or safety inspection by any Defendant;
- c. Lapham, the inspector, was on the scene every day and did not properly perform his role.

33. Additionally, the investigation conducted by Lam after the collapse was defective as follows:

- a. The report did not address the cause of the collapse;
- b. It omitted mention of the OSHA requirements for proper shoring;
- c. It did not discuss the lack of certified engineering plans before the pour proceeded;
- d. It did not discuss the lack of required anchoring inspections by engineers;
- e. The investigation failed to address whether the wall was built according to the CGM requirements;
- f. Lam failed to review the DWRs;

g. Lam never interviewed Groce, Nelson, or McIntosh;

h. The report incorrectly stated that the same anchor plan had been used successfully on previous sections, but there was no anchor plan, and photographs of record show that telescoping poles and concrete shoes had been used on other sections of the wall;

i. Lam did not examine the rubble from the collapse, as evidenced by the fact that a visual examination of the rubble would have shown that no telescopic poles or concrete shoes were used;

j. No photos were taken of the rubble and debris while it was being cleared to assess the shoring and anchoring; and

k. Lam's report contains a false statement: "Per Ashley & Kevin no shop drawings are required to be submitted for approval." It appears that "Ashley" and "Kevin" are Defendants Ashley Graves and Kevin Gerald. As previously discussed, such drawings are in fact required.

34. When asked under oath why there was no in-depth investigation of the incident, Price answered, "And what was there to investigate?" Deathredge described this as "ludicrous."

35. Deathredge identified the following examples as indicators that Meredith, the Chief District Engineer, did not appear to be interested in knowing what had occurred:

- a. Meredith never went to the scene to see what happened;
- b. He never read the OSHA investigation report; and
- c. Meredith was satisfied with Lam's investigation, which was deficient.

36. Meredith was the Chief District Engineer with the ultimate authority and responsibility for all engineering matters in the district. He did not enforce any of the engineering or construction standards. The absence of enforcement caused the failure of the wall. Price knew that VanMeter was an unsafe contractor. He could have banned VanMeter, or at least required heightened inspection. Lapham saw imminent OSHA violations on the scene on the date of the rollover but

did not take corrective action. Moreover, he was the inspector on site and did not intervene to interrupt the unsafe construction of the wall. Even a cursory inspection would have shown that a catastrophe was highly likely. Graves and Geraldts are licensed engineers, but were essentially absent during the roughly thirty days before this incident occurred. Graves was not on site at all during that month, and Geraldts was on site once (approximately 35 days prior to the collapse, on a day there was no work being performed on the wall). They also saw imminent OSHA violations on the scene on the date of the collapse but did not take corrective action. After considering the evidence, the Court allocates fault among the seven (7) Defendants as follows:

Greg Meredith 25%

Tom Lapham 25%

Daryl Price 25%

Kevin Geraldts 10%

Ashley Graves 10%

Mark Love 2.5%

Jon Lam 2.5%

COMPENSATORY DAMAGES

Pursuant to the Consent Judgment, Plaintiffs and Defendants agreed that Plaintiffs could submit written reports to prove their damages. The Estate of Kenneth Decker submitted a written report from Dr. Susane Leguizamon, an economics professor at Western Kentucky University. Jamie Groce, John McIntosh, and Steve Nelson submitted reports from Dr. Craig Roberts, an orthopedist at the University of Louisville, and Sara Ford, who has a Masters in Rehabilitation Counseling and performs forensic economics evaluations to determine the loss of earning capacity for claimants. These witnesses qualify as experts in their respective fields.

FINDINGS OF FACT REGARDING COMPENSATORY DAMAGES

1. Kenneth Decker was killed as a result of the collapse of the retaining wall. He was 63 years old at the time of his death and was employed full time in heavy highway construction.

2. Kenneth Decker's funeral expenses were \$11,769.00.

3. In Dr. Leguizamon's report dated May 13, 2022, Decker's lost earning capacity was estimated to be between \$350,944 and \$425,818. Since the report's preparation, there has been considerable volatility in both earnings and inflation. The Court therefore exercises its discretion and accepts the higher number of \$425,818.00.

4. Velma Decker is 74 years of age. She and Kenneth Decker had been married for 42 years when he died. They have two daughters, one of whom is deceased. Based on the Social Security Actuarial Life Tables in evidence, Velma Decker can expect to live more than twenty (20) years as a widow.

5. The testimony established that the Deckers had a close relationship and a strong marriage. Kenneth Decker capably fixed and maintained things around their home. They enjoyed many leisure pursuits together. She clearly and understandably misses him terribly. Since Kenneth Decker's death, their home and premises have fallen into bad repair. He would have been able to maintain the premises had he been present.

6. Based on the proof, the Court finds that an award of \$2,000,000.00 for Velma Decker's loss of spousal consortium would be appropriate.

7. John McIntosh is 60 years old and resides in Clay City, Kentucky. He joined the Navy upon graduating from high school and became a welder in the Seabees. He has a history of employment

in heavy construction work. He has operated heavy equipment, forming, framing, pouring and finishing concrete, bridge building, and walking high beams.

8. When the retaining wall failed, McIntosh landed chest-deep in concrete. A bystander had to wade in and pull him out.

9. His major injuries include multiple ligamentous injuries and tears in the right knee, fracture of the tibia, internal cartilage injury, knee pain, adhesions, weakness, and instability. McIntosh had a total of 108 medical appointments, including two surgeries, and 91 physical therapy appointments.

10. Mr. McIntosh's past medical expenses are \$72,946.92.

11. The August 26, 2021 report of Dr. Craig Roberts notes that McIntosh suffered significant medical injuries and impairments attributable to the retaining wall collapse. He estimated the cost of future medical care at between \$50,000 and \$80,000. In exercising its discretion, the Court finds that \$80,000.00 is a fair and appropriate award for future medical care.

12. Based on the supplemental report from Dr. Roberts dated January 24, 2022, McIntosh has significant restrictions that render him incapable of the type of construction work he has previously done. The September 2, 2022 report by Sara Ford contains a detailed analysis of Mr. McIntosh's lost earning capacity, which she assessed to be \$531,288.00.

13. Based on McIntosh's testimony, he is unable to engage in many or most of his previous leisure activities. He continues to suffer from significant pain, and his activities of daily living are substantially curtailed. His son, Preston McIntosh, substantiated this testimony. Further, he testified regarding the effects of the injury and resulting pain on McIntosh.

14. McIntosh has a permanent injury that is severe and disabling. It continues to cause him pain and negatively affect his enjoyment of daily living. Moreover, the event itself was traumatic and frightening. A fair amount for pain and suffering, past and future, would be \$1,000,000.00.

15. Jamie Groce is 45 years old and has a twelfth-grade education. She was 35 when the retaining wall collapsed. Groce is a high school graduate. She went to work for Scotty's Contracting and Stone, LLC in 1997 and, in 2001, she went to work for VanMeter as a laborer/helper. While at VanMeter, she became certified as a skilled carpenter. Her jobs with VanMeter were, in general, physically demanding and included building forms and woodwork, working with hand tools, taking measurements, operating equipment, and moving heavy materials.

16. On the date of the retaining wall collapse, Groce was on top of the form vibrating the concrete with a 12-foot device. She heard a noise and felt a vibration, and remembers little else of the collapse.

17. Her major injuries include multiple fractures in her lower and upper extremities and her pelvis. She continues to suffer from the accident in myriad ways. She had a total of 67 overnight stays in medical facilities, 266 medical appointments, six surgeries, and 150 physical therapy appointments.

18. Groce's past medical expenses are \$897,244.98.

19. The August 12, 2021 report of Dr. Craig Roberts contains a detailed history of Groce's injuries and impairments, all attributable to the retaining wall collapse. Roberts estimated the cost of future medical care at between \$180,000 and \$300,000. The Court finds that \$300,000.00 for future medical care is appropriate.

20. A supplemental report from Dr. Roberts dated December 15, 2021 contains substantial medical restrictions that would preclude Groce from any work at all.

21. The September 2, 2022 report by Sara Ford contains a detailed analysis of Groce's lost earning capacity and a summary of independent medical examinations that she has undergone. Ford assessed lost earning capacity at \$1,532,840 for a female and \$1,854,783 for a man. While Groce certainly performed heavy labor, the Court defers to the report's measure of lost earnings for a female worker and finds that Groce's lost earning capacity is therefore appropriately estimated at \$1,532,840.00.

22. Groce has complex regional pain syndrome, severely limited mobility, and other lasting effects from her injuries. She cannot engage in much if any physical activity. She has missed out on many aspects of parenthood as a result of her limitations.

23. Based on the evidence, the Court concludes that Groce has permanent, painful, and disabling conditions. Further, she was relatively young at the time of the incident. The Court therefore awards Groce \$2,000,000.00 for her pain and suffering.

24. Steven Nelson was 61 years old at the time of the trial. He has a tenth-grade education and has been married to Linda Nelson for 40 years. He did bridge construction work for 19 years, then highway structures for 10 years, and went to work for VanMeter in 2012. At VanMeter he did bridge work and then went to work on this retaining wall.

25. When the wall failed, Nelson was on top of the form while concrete was being poured. After the fall he could not walk, and his right wrist had bones sticking out. He saw Groce lying under the crane and Decker was nearby.

26. Due to this incident, Nelson suffered a wrist fracture with distal radial ulnar joint dislocation on his dominant side. He continues to suffer from problems in his right upper extremity as well as post-traumatic stress.

27. Nelson had four overnight stays in medical facilities, 83 medical appointments, four surgeries, and 51 physical therapy appointments. His right wrist has been replaced.

28. Nelson's past medical expenses are \$83,801.00.

29. In his August 19, 2021 report, Dr. Roberts attributes Nelson's aforementioned conditions to the retaining wall collapse. He estimated the cost of future medical care at between \$50,000 and \$100,000. Dr. Roberts also imposed a permanent restriction of no repetitive lifting with the right arm of more than two pounds. Nelson has demonstrable limitations in range of motion consistent with the opinion of Dr. Roberts. The Court finds that an award for the cost of future medical care in the amount of \$80,000.00 is appropriate.

30. According to the report by Sara Ford, Nelson's lost earning capacity has been assessed at \$568,022.00.

31. Nelson's wife, Linda Nelson, has end-stage cancer. Due to his physical limitations, Nelson is unable to adequately provide care for her. This understandably upsets him. Moreover, he is physically unable to engage in hobbies and leisure pursuits that he enjoyed before this incident. This has led to alcohol abuse and depression. Nelson testified that he had contemplated suicide but was stopped by his daughter.

32. Nelson's son Justin confirmed these changes in Nelson's abilities, demeanor, and personality after the incident. He further attested to the incident's effect on his parents' relationship. In Justin's words, "Dad's gone, basically.... A broken man."

33. Nelson has severe injuries that are permanent. He suffers from considerable pain, and his condition has severely impaired his quality of life. The Court therefore awards him \$2,000,000.00 for his pain and suffering.

34. Linda Nelson testified at trial. She confirmed the above information regarding the changes in her husband, including the physical problems, the inability to do things, and the deterioration of their relationship. This incident led to a loss of marital intimacy and society before Linda Nelson became ill, and continues to interfere with the marital relationship because Nelson is unable to do so many things.

35. Accordingly, the Court believes an award of \$1,000,000.00 for loss of spousal consortium is appropriate.

FINDINGS OF FACT RELATED TO PUNITIVE DAMAGES

1. Based on the evidence, the Court finds that highway construction is an inherently hazardous undertaking, not only for those directly engaged in it but also to members of the public.

2. This level of risk has prompted extensive safeguards and standards that must not be ignored. Failure to properly adhere to those standards was very harmful and, in fact, deadly in this case. Adding to that the knowledge of VanMeter's prior failure to follow safety standards, this case presents clear and convincing evidence of gross negligence, which makes an award of punitive damages appropriate.

3. Application of the OSHA regulations, the Standard Specifications, and the Construction Guidance Manual was mandatory to the project at issue in this action.

4. Defendants had a non-delegable duty to make sure the standards were followed and had the ability to shut down the project if standards were not being followed, yet Defendants failed to ensure that these standards were being observed.

5. The record clearly shows that there was no supervision by Defendants to ensure compliance with the rules in place with respect to this wall.

6. Defendants failed to make sure VanMeter had competent personnel on site, as was clearly required by the standard of care. Based on the record, including his admissions, Lipe was unqualified to supervise the construction of the retaining wall.

7. Defendants' failure to follow their duty to ensure strict compliance with multiple sets of standards constitutes gross negligence and was a proximate cause of the retaining wall failure that caused the death of Kenneth Decker and the severe injuries of Steve Nelson, Jamie Groce, and John McIntosh.

8. At the time this incident occurred, it was very likely that serious harm in the form of a collapse of the wall would arise from Defendants' conduct and their inattention to safety; in fact, it approached an "engineering certainty."

9. In their professional roles, and considering their training, their job duties, the inherent risks of highway construction, and the extensive framework of rules and standards in place to minimize risk, Defendants were necessarily aware of the likelihood of a tragic incident; any lack of awareness of the risks would itself indicate callous disregard for safety.

10. For at least thirty days before the wall collapsed, Defendants failed to make any safety inspections or to otherwise carry out their duties to maintain the safe construction of this wall.

11. There was little to no effort to ascertain the causes of the failure or to conduct an adequate investigation. The evidence suggests willful ignorance and leads to a conclusion that Defendants did not want to draw attention to the failures at the root of this incident.

12. Defendants ignored mandatory standards, failed to inspect, did not supervise, did not ensure competent personnel on site, failed to shut down an unsafe project, and ignored the poor safety record of a subcontractor. These failures evince a wanton or reckless disregard for the safety of persons involved in the construction of this retaining wall.

13. Given the roles of these Defendants as the supervisors of highway construction in southern Kentucky, it is relevant to consider the elements of both punishment and deterrence when determining punitive damages in this matter.

14. A punitive damages award would be appropriate to deter the type of gross negligence in evidence here. The hope would be to deter gross negligence on the part of these named Defendants, those similarly situated, as well as others performing ministerial duties on behalf of the public.

15. Based on the foregoing, an award of \$10,000,000 in punitive damages is just and proper. This amount should be prorated among Plaintiffs.

CONCLUSIONS OF LAW

1. The Court incorporates all conclusions of law set out in prior orders. Specifically, the Court reiterates its conclusions previously reached pursuant to *Associated Ins. Service, Inc. v. Garcia*, 307 S.W.3d 58, 66 (Ky.2010).

2. “Reasonable probability is all that is required of evidence in order to support a factual conclusion.... Evidence reasonably tending to prove the essential facts, either directly or indirectly, or by permissible inference, is sufficient to sustain a judgment.” *Coleman v. Baker*, 382 S.W.2d 843, 847–48 (Ky.1964).

3. “Compensatory damages are designed to equal the wrong done by the defendant.” *Gibson v. Kentucky Farm Mutual Insurance Company*, 328 S.W.3d 195, 204 (Ky.App.2010) (quoting *Jackson v. Tullar*, 285 S.W.3d 290, 297–98 (Ky.App.2007)).

4. Loss of consortium is a common-law cause of action that has long been recognized in this state. See, e.g., *Dietzman v. Mullin*, 108 Ky. 610, 57 S.W. 247 (1900) and *Kotsiris v. Long*, 451 S.W.2d 411 (Ky.1970). The loss of spousal consortium claim was codified in KRS 411.145. “Consortium” refers to the right to the services, assistance, aid, society, companionship and

conjugal relationship between spouses. KRS 411.145(1). The Kentucky Supreme Court has described the spousal relationship as “the most compelling of human relationships, other than possibly that of parent and child.” *Martin v. Ohio County Hospital Corp.*, 295 S.W.3d 104, 111 (Ky.2009).

5. An award for damages in a personal injury case is a matter of “judgment and discretion” for the finder of fact; assessment of damages must not be “influenced by passion and prejudice, or ... so unreasonable as to appear at first blush disproportionate to the injuries sustained.” *Stanley v. Caldwell*, 274 S.W.2d 383, 385 (Ky.1954).

6. Kentucky law requires an allocation of fault among multiple parties who are at fault. KRS 411.182.

7. Punitive damages are available if a plaintiff proves by clear and convincing evidence that a defendant acted with fraud, oppression, or malice. KRS 411.184(2). In addition, the Kentucky Supreme Court has determined that notwithstanding the statute, punitive damages are also available upon a showing of gross negligence. *Williams v. Wilson*, 972 S.W.2d 260, 262–65 (Ky.1998).

8. “While the courts of the Commonwealth have not always used precisely the same language in defining gross negligence, the prevailing understanding defines gross negligence as a ‘wanton or reckless disregard for the safety of other persons.’” *Kinney v. Butcher*, 131 S.W.3d 357, 359 (Ky.App.2004). In this respect, the terms “evil motive” and “reckless indifference to the rights of others” are essentially synonymous, as “[t]he essential question at the heart of the gross negligence analysis is ‘whether the misconduct has the character of outrage.’” *Horton v. Union Light, Heat & Power Co.*, 690 S.W.2d 382, 389 (Ky.1985) (quoting *Hensley v. Paul Miller Ford, Inc.*, 508 S.W.2d 759, 762 (Ky.1974)).

9. “[I]t is possible that a certain course of conduct can be so outrageous that malice can be implied from the facts of the situation.” *Kinney v. Butcher*, 131 S.W.3d 357, 359 (Ky.App.2004) (quoting *Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 52 (Ky.2003)). To justify punitive damages, “there must first be a finding of failure to exercise reasonable care, and then an additional finding that this negligence was accompanied by ‘wanton or reckless disregard for the lives, safety or property of others.’” *M.T. v. Saum*, 3 F. Supp. 3d 617, 623 (W.D.Ky.2014) (quoting *Horton v. Union Light, Heat & Power Co.*, *supra.*) See also *Ellis v. Gallatin Steel Co.*, 390 F.3d 461, 471 (6th Cir.2004), noting that Kentucky law allows punitive damages when negligence is “accompanied by wanton or reckless disregard for the lives, safety, or property of others.”

10. Clear and convincing evidence consists in “evidence of a probative and substantial nature carrying sufficient weight to convince ordinarily prudent-minded people of its validity.” *Southard v. Belanger*, 966 F.Supp.2d 727, 738 (W.D.Ky.2013) (citing *W.A. v. Cabinet for Health & Family Services*, 275 S.W.3d 214, 220 (Ky.App.2008)).

11. Punishment and deterrence are legitimate objectives served by an award of punitive damages. See *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001).

12. According to KRS 411.186, the following factors should be considered in determining the amount of punitive damages:

- a. The likelihood at the relevant time that serious harm would arise from the misconduct;
- b. The degree of the defendant’s awareness of that likelihood;
- c. The profitability of the misconduct to the defendant;
- d. The duration of the misconduct and any concealment of it by the defendant; and

e. Any actions by the defendant to remedy the misconduct once it became known to the defendant.

13. Factors in considering whether the amount of a punitive damage award is excessive include the degree of reprehensibility of the misconduct, the relationship between compensatory damages and the punitive damages award, and the civil penalties authorized or imposed in comparable cases. *BMW of North America Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 409, 123 S.Ct. 1513, 1515, 155 L.Ed.2d 585 (2003).

14. The legal rate of interest on a judgment is 6%, compounded annually from the date the judgment is entered. KRS 360.040.

15. The prevailing party may be awarded court costs actually expended, but such an award is discretionary. CR 54.04.

JUDGMENT

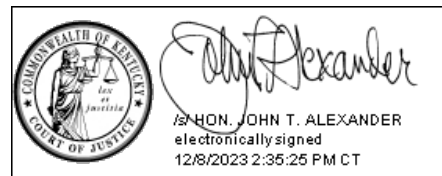
Based on the foregoing, and the Court being sufficiently advised, it is hereby found and adjudged as follows:

1. The Estate of Kenneth Decker shall recover of Defendants the sum of \$437,587.00;
2. Velma Decker shall recover of Defendants the sum of \$2,000,000.00 for loss of consortium;
3. John McIntosh shall recover of Defendants the sum of \$1,684,234.92;
4. Jamie Groce shall recover of Defendants the sum of \$4,730,084.98;
5. Steve Nelson shall recover of Defendants the sum of \$2,731,823.00;
6. Linda Nelson shall recover of Defendants the sum of \$1,000,000.00 for loss of consortium;

7. Plaintiffs shall recover punitive damages from Defendants in the amount of \$10,000,000.00 to be prorated among Plaintiffs in the same proportion as each Plaintiff's share of the total compensatory damages awarded; and

8. Plaintiffs shall further recover interest on the above amounts at the rate of 6% per annum until paid, as well as their court costs.

IT IS SO ORDERED this 8th day of December 2023. This is a final and appealable judgment, and there is no just cause for delay in its entry.



HON. JOHN T. ALEXANDER
JUDGE, BARREN CIRCUIT COURT

Distribution:
Mike Breen
Thomas N. Kerrick
Patrick Schmeckpeper
W. Kenneth Nevitt
Hamp Moore

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