No. 24-

IN THE

Supreme Court of the United States

KEVIN J. PATTEN, BLUE & GREEN TRUCKING & HAIR, LLC, AND KEVIN J. PATTEN D/B/A BLUE & GREEN TRUCKING & HAIR, LLC,

Petitioners,

v.

TRAVIS S. SWEIGART,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI OF KEVIN J. PATTEN AND BLUE & GREEN TRUCKING & HAIR, LLC, AND KEVIN J. PATTEN D/B/A BLUE & GREEN TRUCKING & HAIR, LLC

LAMB MCERLANE PC

MAUREEN M. MCBRIDE
Counsel of Record
24 E. Market Street
P.O. Box 565
West Chester, PA 19381
(610) 701-4410
mmcbride@lambmcerlane.com

RICCI TYRRELL JOHNSON AND GREY, PLLC

MICHAEL T. DROOGAN, JR.
1515 Market Street,
Suite 1800
Philadelphia, PA 19102

334226

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Third Circuit's imposition of a categorical rule against bifurcation of trials involving catastrophic injuries violates the letter and spirit of Fed.R.Civ.P.42, conflicts with decisions from other circuit courts and shields bifurcation decisions from meaningful appellate review?

PARTIES TO THE PROCEEDINGS

Petitioners here (Defendants below) are Kevin J. Patten, Blue & Green Trucking & Hair, LLC, and Kevin J. Patten d/b/a Blue & Green Trucking & Hair, LLC. Plaintiff-respondent is Travis Sweigart. Voyager Trucking Corp. is not a party to this appeal.

CORPORATE DISCLOSURE STATEMENT

Blue & Green Trucking & Hair, LLC, the nongovernmental corporate party to this petition, does not have any parent corporation and does not issue stock.

RELATED PROCEEDINGS

Travis S. Sweigart v. Voyager Trucking Corp., Kevin J. Patten, Blue & Green Trucking & Hair, LLC, and Kevin J. Patten d/b/a Blue & Green Trucking & Hair, LLC, No. 5:21-cv-0922, United States District Court for the Eastern District of Pennsylvania. Judgment entered July 14, 2023.

Travis S. Sweigart v. Voyager Trucking Corp., Kevin J. Patten, Blue & Green Trucking & Hair, LLC, and Kevin J. Patten d/b/a Blue & Green Trucking & Hair, LLC, 23-2397, U.S. Court of Appeals for the Third Circuit. Judgment entered July 29, 2024.

Voyager Trucking, et al. v. Prime Property & Casualty, et al., No. 230602967, Court of Common Pleas of Philadelphia County. Case in progress.

Prime Property & Casualty Insurance, Inc. v. Transfer Trailer Services, Inc., Transfer Station Services, Inc., Voyager Trucking Corp., Tvd Transport Corp., Tvd Organics D.B.A. Voyager Trucking Corp., and Kevin Patten, No. L000709-23, Superior Court of Essex County, New Jersey. Case in progress.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Statutes, Rules and Other Authorities

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 2a) is unpublished but available at 2024 WL 3565306. The decision of the United States District Court for the Eastern District of Pennsylvania (Pet. App. 21a) is contained within an unpublished order.

JURISDICTION

The Third Circuit issued its decision on July 31, 2024. The Third Circuit denied petition for rehearing *en banc* on August 28, 2024. (Pet. App. 28a.) This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULE INVOLVED

Federal Rule of Civil Procedure 42(b) states:

> For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

STATEMENT OF THE CASE

The Third Circuit's interpretation of Rule 42(b) creates an unprecedented presumption against bifurcation

which, according to the Court, cannot be overcome "just because" the case involves serious horrific injuries. This holding, which suggests that Rule 42(b) bifurcation is not warranted unless the case involves more than just horrific personal injuries, conflicts with the analysis rendered by other circuits. Moreover, if left to stand, the decision will encourage excessive jury verdicts motivated by sympathy where, as here, the injuries are "particularly gruesome," while essentially eliminating good-faith defenses based on liability and causation. The Third Circuit's holding that the Respondent's severe injuries were not a "persuasive reason" to bifurcate ignores a fundamental reality: jurors' sensibilities are often overcome by exceptionally shocking evidence. It must be corrected.

This holding is in direct conflict with other Circuits, which review bifurcation decisions based on the specific facts of the case. No other Circuit has interpreted Rule 42(b) to create a presumption against bifurcation where damages are shocking and severe. Rule 42(b) exits in large part to allow the jury process to proceed objectively without jurors being overwhelmed by a natural compassion for a person gruesomely injured, even though legitimate defenses may otherwise prevail.

The facts of this case concern a catastrophic motorcycle accident that resulted in injuries so horrific that the treating emergency room surgeon described them as "unquestionably the worst . . . that I've taken care of." The district judge pronounced that they were "extraordinary injuries that no human—unless you don't have a heart could possibly not be affected by. . . ." (Pet. App. 25a). Given the extremely gruesome injuries and their likely prejudicial effect on the outcome of the case,

Petitioners prudently moved, pre-trial, to have the trial bifurcated between liability and damages. Their request was denied. Only five minutes into Respondent's case-in-chief, a juror became so overwhelmed by evidence of Respondent's injuries that he passed out, emergency responders were called, and Respondent's two trauma surgeon expert witnesses rushed to the juror's aid. Petitioners immediately moved for mistrial, but the district court refused. After fewer than three hours of deliberation, the jury returned a verdict in Respondent's favor, awarding him $25 million. (Pet. App. A.)

In affirming the District Court's decision to deny bifurcation, the Third Circuit found that Petitioners "offer no persuasive reason" why bifurcation was warranted, noting that a trial should not be bifurcated "just because a case involves serious personal injuries," and concluding that any ruling to the contrary "would flip the presumption against bifurcation on its head." (Pet. App. 9a.)

By reaching this holding, the Third Circuit effectively imposed a categorical rule. Rather than addressing the particular injuries of *this* case—the worst any attorney or jurist may come across during his or her career—the Third Circuit issued a categorical rule holding that bifurcation is *not* warranted "just because" *any* case involves personal injuries. Perhaps more telling, the Third Circuit did not cite a case that holds that there is a "presumption against bifurcation." (*Id.*)

The Third Circuit's new rule conflicts with virtually all other circuit courts. All other circuit courts across the nation carefully review the specific facts of a given case in determining whether the grant or denial of bifurcation in that case was an abuse of discretion.

A. Factual Background

On September 19, 2019, at about 5:30 am, a motorcycle driven by Respondent crashed into a tractor-trailer driven by Petitioner Kevin Patten. Mr. Patten's business, Petitioner Blue & Green Trucking & Hair, LLC, was hired to perform work for Voyager Trucking Corp. Respondent sustained extensive injuries as a result.

When he was approximately one mile from a landfill where he was to deposit waste, Mr. Patten exited I-176 (located in Berks County, Pennsylvania) and prepared to turn left onto northbound Route 10/Morgantown Road. Before proceeding to cross the southbound, oncoming lane of Route 10, Mr. Patten stopped at the intersection for three seconds to check both travel lanes for approaching traffic, at which time he observed the headlight of Respondent's Yamaha Fazer motorcycle about three football fields away. Respondent was in the southbound lane of Route 10 and Mr. Patten was intending to turn left, into the northbound lane of Route 10.

Given the distance, and as a commercial driver's license holder and trained motorcyclist, Mr. Patten began to turn left, confident that he had adequate time to safely cross the southbound lane of Route 10, and then head north. However, Respondent was speeding to get to work on time and did not reduce his speed even after he saw the tractor-trailer. Mr. Patten had almost completed his turn across Route 10—with his tractor in the northbound moving lane, and was about to clear the oncoming southbound lane—when Respondent lost control of his motorcycle, began skidding, and crashed into the left rear tandem wheels of the trailer.

As Respondent sped towards the tractor-trailer, he would have seen the 70-foot tractor and trailer turning onto the road in front of him for nearly 12 seconds, before crashing into it. Mr. Patten's rig was also visible for at least four seconds before initiating the turn. Respondent and Mr. Patten were both familiar with the area; Respondent had driven across the stretch of road thousands of times. Visibility was also not at issue, nor was there other traffic.

B. Procedural History

1. The Trial

Given the extensive and graphic nature of Respondent's injuries, Petitioners requested that the trial be bifurcated between liability and damages. Petitioners' request, however, was denied, and the case proceeded to trial.

Unsurprisingly, Respondent made his grievous injuries the centerpiece of his case. Respondent's counsel wasted no time spelling out the injuries during his opening statement to the jury, graphically describing for the jury Respondent's "devastating" injuries—"a sheering injury that was so severe that it severed his penis right from the bladder. It took his bowel, so his large intestine, and it ripped it out at the anus so that when they found him in the road and he was bleeding there, there was just a hole there that the bowel had been ripped out of place inside him. His penis severed. His legs were badly broken."

Respondent's counsel continued, recounting for the jury how Respondent "lost his right leg . . . his left leg was severely damaged . . . his surgeon has recommended that he amputate his left leg and that he have a total hip

replacement on his right side and that that might get him out of his wheelchair and get him more functional."

Respondent then called his first witness: Dr. Ryan Michels, the surgeon who treated Respondent in the emergency department. The surgeon offered graphic testimony about Respondent's injuries, explaining how his hip socket "exploded" and was "in ten pieces," and how his pelvic fracture was "unquestionably the worst pelvic fracture that I've taken care of out of 400, 500 cases." Dr. Michels further explained how Respondent's foot was "crushed" and how there is no surgery to fix it, and how a "large piece of his calcaneus bone actually was spun out through a wound on the inside of his foot" and was "exposed to the elements—or on the street as it were at the time of this injury."

Respondent's counsel then asked Dr. Michels to describe to the jury the many medical procedures Respondent was forced to endure. In the midst of this graphic testimony about the various medical procedures Plaintiff was forced to undergo—just five minutes into the surgeon's examination—Juror 2 became so overwhelmed that he passed out and 911 was called. Dr. Michels exclaimed, "Can we get an ambulance," and leapt into the jury box.

Another of Respondent's experts, Dr. Moshkovsky, who was sitting in the gallery, also intervened to render assistance to Juror 2, whom the District Court remarked had "passed out hearing the testimony of the injuries suffered by" Respondent. All this occurred in the presence of the other jurors. After being taken to a local hospital and released, Juror 2 returned to the courtroom later in

the day, and told the court and counsel that the reason for his unease was "the medical talk, I just started feeling light headed."

After Juror 2 was taken from the courtroom by paramedics, Petitioners requested a mistrial, with the District Court itself anticipating counsel's position: "now you're wondering if it might not have been a good idea to bifurcate." Petitioners agreed that bifurcation was warranted but also moved for a mistrial on grounds that Respondent's two treating physicians rendered aid to Juror 2, which created a "halo effect," and prevented the jury from fairly assessing their credibility and testimony. The District Court denied the request.

Dr. Filip Moshkovsky, another trauma surgeon who treated Respondent and who was also admitted as an expert, testified next. Respondent's counsel decided to "cut to the chase" by "short chang[ing]" the witness's qualifications and returning to Respondent's graphic injuries. Dr. Moshkovsky testified that Respondent "had significant bleeding" and described the anatomy of his pelvis as "all distorted. You couldn't tell the anatomy because the blood clot had expanded so much that everything was not where it was supposed to be." Dr. Moshkovsky testified that he "couldn't find" Respondent's "anus," but upon closer inspection found that it "was ripped out from his muscle base and it was pulled back up into the muscle," with ripping from "the butt cheeks and the middle all the way up towards the scrotum. . . ." It was also discovered that Respondent's "penis [was] torn off from his bladder where his prostate is. That is a very unusual presentation." And because Respondent's anus eventually turned gangrenous, it was removed, leaving Plaintiff "with a permanent bag where he defecates. . . ."

Dr. Moshkovsky testified that this "was the most complex case I've ever seen," and that, based on the collective "60 years of trauma experience in that room," it "was unanimous that this was the most complex injury anyone has seen at that time. . . . And I can hands down say until that point and since that point, this has been the most complex injury I've seen." Indeed, Dr. Moshkovsky wrote an article in a medical journal about Respondent's injuries.

After no more than three hours of deliberation, the jury rendered a verdict in favor of Respondent and against Mr. Patten, allocating 95% of liability towards Mr. Patten, and awarding Respondent $23,750,000.00.

2. The Appeal

After the District Court denied Petitioners' post-trial motions (some of which the court described as a "close call"), Petitioners appealed and challenged, among other things, the District Court's denial of Petitioners' Motion to Bifurcate.

On appeal, the Third Circuit upheld the District Court's decision, stating that Petitioners "offer no persuasive reason" why bifurcation was warranted, noting that a trial should not be bifurcated "just because a case involves serious personal injuries," and concluding that any ruling to the contrary "would flip the presumption against bifurcation on its head." (Pet. App. 9a.)

Petitioners sought rehearing *en banc*, arguing that the Third Circuit's rule allows District Courts unfettered discretion over bifurcation requests. The Third Circuit

denied the petition August 27, 2024. (Pet. App. 28a.) This petition follows.

REASONS FOR GRANTING THE PETITION

The Third Circuit's decision improperly limited Rule 42 by creating a rebuttable presumption against bifurcation. This decision allows the Third Circuit to essentially rubber-stamp a district court's denial of a request to bifurcate a civil trial involving catastrophic injuries without meaningful appellate review. This new requirement is unsupported by caselaw and conflicts with decisions made by other circuits in similar circumstances. While other circuits evaluate the propriety of a district court's bifurcation ruling based on the specific facts of the case in light of the district court's reasoning, the Third Circuit deferred almost entirely to the district court's decision, noting that trials should not be bifurcated "just because a case involves serious personal injuries." The Third Circuit's approach simply cannot be squared with the approach taken by courts in other circuits around the country.

Petitioners recognize that district courts have wide discretion to manage their dockets. *See Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (noting that this Court "has long recognized that a district court possesses inherent powers that are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases" (cleaned up)). However, under Fed.R.Civ.P. 16(c)(2)(M), a district court has the authority to "order[] a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue"

for purposes of "convenience, to avoid prejudice, or to expedite and economize" the proceedings. Fed.R.Civ.P. 42(b); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002). Indeed, it has been recognized that Rule 42(b) "is sweeping in its terms and allows the district court, in its discretion, to grant a separate trial of *any kind* of issue in *any kind* of case." 9A Arthur R. Miller, Federal Practice and Procedure § 2389 (3d ed., Apr. 2021 update). Thus, while "[t]he piecemeal trial of separate issues in a single lawsuit or the repetitive trial of the same issue in severed claims is not to be the usual course," 9A Arthur R. Miller, Federal Practice and Procedure § 2388 (3d ed. Supp. Apr. 2020), "it is important that it be encouraged where experience has demonstrated its worth." Fed.R.Civ.P. 42 (advisory committee's note to 1966 amendment).

It has also been recognized, that a district court's discretion in determining whether to bifurcate is not unfettered. Indeed, even the Third Circuit recognizes that the decision to bifurcate is "decided on a case-by-case basis and must be subject to an informed discretion by the trial judge in each instance." *Lis v. Robert Packer Hosp.*, 579 F.2d 819, 824 (3d Cir. 1978) (citation omitted). Bifurcating liability and damages at trial is "[t]he most common form of issue bifurcation. . . ." Gensler And Mulligan, 1 Federal Rules Of Civil Procedure, Rules And Commentary Rule 42 (Feb. 2023 Update).[1]

1. *See also* 9A Wright & Miller, Federal Practice & Procedure—Civ. § 2390 (3d ed. Apr. 2022 Update) ("The separation of issues of liability from those relating to damages is an obvious use for Federal Rule 42(b)"); 1 Fed. Jury Prac. & Instr. § 5:3 (6th ed.) ("Separate trials are most often granted in personal injury and negligence actions where there is a dispute as to liability—the liability issue is tried first with a damages trial necessary only if liability is found to exist.")

I. There Is a Clear Conflict Over a Significant Question

Under the framework applied by the Third Circuit, district courts, at least within the Third Circuit, have unfettered discretion in determining whether to bifurcate proceedings. After the district court denied Petitioners' request to bifurcate the trial given the extraordinary and catastrophic injuries involved, the Third Circuit summarily rejected Petitioners' arguments that the district court abused its discretion, holding that Petitioners were not entitled to bifurcation "just because a case involves serious personal injuries." By concluding that any ruling to the contrary "would flip the presumption against bifurcation on its head" (Pet. App. 9a), the Third Circuit created a categorical rule that prevents meaningful review of a bifurcation decision. The Third Circuit's ruling gives lip service to its own standard without comporting with it and its analysis conflicts with the analysis applied by virtually all other circuit courts.

A. The Third Circuit Merely Gave Lip Service to its Own Precedent.

In *Lis v. Robert Packer Hosp.*, 579 F.2d 819 (3d Cir. 1978), the Third Circuit ended the "general practice," common among some district courts at the time, requiring all negligence cases to be bifurcated as a matter of course. The *Lis* Court rejected the district courts' reliance on a bright-line rule in determining whether bifurcation should be ordered, holding instead that "the decision to bifurcate Vel non is a matter to be decided *on a case-by-case basis* and must be subject to an informed discretion by the trial judge *in each instance*." *Id.* at 824 (emphasis added). The *Lis* court recognized that this approach was consistent

with Rule 42(b) ("For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial"). Thus, almost half a century ago, the Third Circuit made clear that a categorical rule on bifurcation "offends the philosophy that a decision must be made by a trial judge *only* as a result of an informed exercise of discretion *on the merits of each case*." *Id.* (emphasis added).

In affirming the District Court's decision to deny bifurcation in this case, the Third Circuit imposed the very type of categorical rule *Lis* rejected. Rather than addressing the particular injuries of *this* case, the Third Circuit essentially issued a categorical rule holding that bifurcation is *not* warranted "just because" *any* case involves personal injuries.

Petitioners, of course, never argued that such a categorical rule does or should apply or that the mere existence of severe personal injuries, alone, provide adequate grounds for bifurcation. On the contrary, Petitioners always have maintained that the uniquely devastating injuries, particular to this case, which had the capacity to overcome jurors' sensibilities while deciding liability, required that the trial be bifurcated. Petitioners further explained that jury instructions emphasizing that sympathy should play no role in the jury's determination, and/or that liability and damages should be kept separate, to which the Third Circuit alludes (Pet. App. 9a-10a), cannot prevent the prejudice Petitioners faced, where the

issue is whether the evidence and events at trial "might" have influenced "the jury's consideration of other issues," *i.e.*, the "spill-over effect," regardless of the issuance of a limiting instruction.

Moreover, Petitioners explained, notwithstanding the fact that evidence of liability and damages may overlap, arrangements (including videotaped trial depositions) could have been made months before trial to protect Petitioners from the prejudice caused by the unique and devastating injury testimony Respondent would likely present. This is true even though, as the Third Circuit concludes, had the District Court bifurcated trial, "the jury would still have known that this was a horrific accident" as the "jury would have seen Plaintiff in a wheelchair." (Pet. App. 11a.) Surely, seeing Respondent in a wheelchair pales in comparison to the surgeons' graphic testimony.

B. The Third Circuit's Decision Conflicts with Decisions Rendered by Other Circuits

The Third Circuit's categorical rule conflicts with nearly all other circuit courts.

The Fifth Circuit regards bifurcation as a "case-specific procedural matter" where each of the factors—convenience to the parties, expedition and economy, and prejudice—are separately reviewed on their own upon appeal. *Sims v. City of Jasper, Texas*, 117 F.4th 283, 290 (5th Cir. 2024). In *Sims*, the Fifth Circuit carefully reviewed whether the district court's decision not to bifurcate, based on evidence about plaintiff's decedent's

"drug use and 'unstable' lifestyle, prior arrests and criminal activity, [and] strained relationship" warranted separate liability and damages phases. *Id.* at 291. Thus, the Fifth Circuit conducted a comprehensive review of the propriety of the bifurcation request in light of the evidence presented. *Id.* at 290-95.

The Sixth Circuit similarly analyzes bifurcation requests. In *Huang v. The Ohio State University*, 116 F.4th 541 (6th Cir. 2024), for example, in a case involving a student's sexual assault allegations against her advisor, the district court "trifurcated" trial into separate phases and excluded any evidence of the defendant's "alleged manipulation, coercion, and influence" from the liability phase. The Sixth Circuit carefully reviewed the district court's decision to trifurcate trial into liability, compensatory damages, and punitive damages phases in light of the specific evidence, and found that the district court abused its discretion by precluding certain categories of evidence from certain phases. *Id.* at 567.

The Second Circuit also carefully reviews the evidence in determining the propriety of a district court's bifurcation ruling. In *Amato v. City of Saratoga Springs, N.Y.*, 170 F.3d 311 (2d Cir. 1999), an excessive force case, the district court ordered that a trial against two police officers and a municipality be bifurcated to allow the trial against the two police officers to proceed first and, if they were found liable by the jury, to allow a trial against the municipality and police department to proceed. *Id.* at 316. The Second Circuit examined the district court's reasoning—that a finding of no liability against the police officers would preclude liability against the municipality

and police department, and evidence against the latter two defendants would be inadmissible against the officers—and found no abuse of discretion. *Id.*

Other circuit courts review bifurcation decisions in similarly scrupulous fashion. *See, e.g., Webb v. Lott*, 2024 WL 3887273 (4th Cir. 2024) (district court did not abuse its discretion by refusing to bifurcate federal and state issues for trial where the basis for the bifurcation request was evidence that the Court of Appeals found properly precluded); *Lund v. Henderson*, 807 F.3d 6 (1st Cir. 2015) (bifurcation of plaintiff's claims against arresting officers from the issues raised against the municipality and chief of police "was a classic exercise of the trial court's management discretion . . . especially where there was the possibility that the resolution of the first phase would moot the need for the second phase"); *Shum v. Intel Corporation*, 499 F.3d 1272 (Fed. Cir. 2007) (holding that district court's decision to bifurcate claims is "not without limits" and reversing a decision to bifurcate where plaintiff was improperly denied a jury trial on legal issues); *Hangarter v. Provident Life and Accident Ins. Co.*, 373 F.3d 998 (9th Cir. 2004) (denial of request to bifurcate issues of liability for breach of contract and punitive damage within discretion of the trial court); *Angelo v. Armstrong World Indus., Inc.*, 11 F.3d 957, 964 (10th Cir. 1993) (noting that "[r]egardless of efficiency and separability, bifurcation is an abuse of discretion if it is unfair or prejudicial to a party," but concluding that where issues are clearly separable reverse bifurcation is appropriate notwithstanding that the same witnesses may testify in both phases).

II. Policy Interests Favor Clear Guidelines on Bifurcation to Protect Fairness in Trials Involving Catastrophic Damages.

Policy interests clearly favor guidelines on bifurcation both to protect the parties' rights to a fair trial and to protect against runaway jury verdicts. Indeed, the denial of bifurcation in cases involving significant damages or emotionally-charged evidence significantly increases the risk of prejudice to the defendant. For example, if a jury hears evidence about the extent of a plaintiff's damages before determining liability, the jury may be swayed to find liability based on the severity of the injuries rather than the strength of the evidence. In cases with graphic evidence, emotional testimony or devastating injuries, jurors might feel compelled to award substantial damages, even when liability is unclear or contested. Bifurcation allows the jury to decide issues separately, allowing the jury to focus solely on liability without being influenced by the emotional impact of damages.

Allowing district courts to exercise unfettered discretion in matters of bifurcation, by contrast, undermines public confidence in the civil justice system. When the judicial process allows highly prejudicial evidence to influence verdicts on liability, it risks turning trials into proceedings governed more by emotion than by law. The Court has a vested interest in ensuring that procedural rules safeguard impartiality, especially in cases with extraordinary damages. Granting certiorari in this case would allow this Court to establish clearer standards for bifurcation, ensuring that litigants receive fair trials even when damages are severe and potentially inflammatory evidence will be presented.

III. This Case Presents an Ideal Vehicle for Clarifying the Law

The facts of this case make it an optimal vehicle for addressing these important questions. The district court's refusal to bifurcate was based solely on procedural discretion, without any findings to mitigate the risk of prejudice.

Because bifurcation minimizes the risk of a runaway verdict, this case, with its staggeringly-high $25 million verdict, is the ideal case for this Court to address whether a categorical rule precluding bifurcation just because personal injuries are involved violates a parties' right to bifurcation under Rule 42. The injuries presented, as described by Respondent's own experts, are among the worst that could be presented; yet, the District Court allowed the liability and damages portions to be tried together. By allowing the District Court's decision to stand, the Third Circuit endorsed a standard that would allow courts to bypass essential fairness considerations. This Court should take the opportunity to clarify the standards governing bifurcation, particularly where highly prejudicial evidence is likely to impact the fairness of proceedings. If bifurcation is not warranted in this case, surely it is not warranted in any other.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

LAMB MCERLANE PC

MAUREEN M. MCBRIDE
Counsel of Record
24 E. Market Street
P.O. Box 565
West Chester, PA 19381
(610) 701-4410
mmcbride@lambmcerlane.com

RICCI TYRRELL JOHNSON AND GREY, PLLC

MICHAEL T. DROOGAN, JR.
1515 Market Street,
Suite 1800
Philadelphia, PA 19102

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JULY 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2397

TRAVIS S. SWEIGART,

v.

VOYAGER TRUCKING CORP., KEVIN J. PATTEN, BLUE & GREEN TRUCKING & HAIR, LLC, AND KEVIN J. PATTEN D/B/A BLUE & GREEN TRUCKING & HAIR, LLC.

KEVIN J. PATTEN, BLUE & GREEN TRUCKING & HAIR, LLC; KEVIN J. PATTEN D/B/A BLUE & GREEN TRUCKING & HAIR, LLC,

Appellants.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court No. 5:21-cv-00922)
District Judge: Honorable Edward G. Smith

Submitted under Third Circuit L.A.R. 34.1(a)
June 28, 2024

Appendix A

Before: JORDAN, SMITH, *Circuit Judges*,
and BUMB, *Chief District Judge**

(Filed: July 29, 2024)

OPINION**

BUMB, *Chief District Judge.*

Plaintiff Travis Sweigart suffered catastrophic injuries when his motorcycle crashed into a tractor-trailer. A jury awarded him $25 million in damages. The truck driver, Kevin Patten ("Patten"), and his trucking company, Blue & Green Trucking & Hair LLC (together, "Defendants"), challenge five discretionary rulings of the District Court.[1] Because the District Court did not abuse its discretion with respect to any of the discretionary issues presented on appeal, we will affirm the jury's verdict in its entirety.

---

* Honorable Renée Marie Bumb, Chief District Judge of the United States District Court for the District of New Jersey, sitting by designation.

** This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1. Defendant Voyager Trucking Corporation, which hired Patten and his trucking company, is not a party to this appeal.

Appendix A

I.

A. The Accident

In the early morning hours of September 9, 2010, Kevin Patten was driving a fully loaded tractor-trailer along Interstate 176 on his way to a landfill in Morgantown, Pennsylvania. He exited at the Morgantown Road ramp. He was on his phone. At the end of the ramp, Patten saw the headlights of Travis Sweigart's motorcycle approaching from about three football fields away. Patten thought that he had enough time to turn left before Sweigart's motorcycle reached him. Sweigart saw the truck moving toward the end of the offramp but did not slow down because he assumed Patten was only inching the truck forward towards the intersection to get better visibility before making the left turn. By the time Sweigart realized Patten was making a full left turn, it was too late. Hitting the brakes hard, Sweigart lost control of the bike. The bike rotated 180 degrees, skidded backwards, and smashed into the left rear tandem wheels of the truck's trailer. The impact caused the motorcycle subframe and seat to crush Sweigart's pelvis. Sweigart's injuries were horrific. One of the emergency room orthopedic surgeons who helped save Sweigart's life testified at trial that it was "unquestionably the worst pelvic fracture that he had ever seen." [JA509.]

B. The District Court Denies Defendants' Bifurcation Motion and Excludes Evidence of Plaintiff's Lack of a Motorcycle License and Prior Acts of Reckless Riding

Concerned about the jury's reaction to Sweigart's gruesome injuries, Defendants moved to bifurcate the liability and damages portions of the trial. They argued that issues of liability and damage were completely distinct and that without bifurcation, there was a real chance that testimony regarding Plaintiff's injuries would infect the jury's decision as to liability. Plaintiff also moved *in limine* to preclude evidence (i) that he did not have a motorcycle license, and (ii) of videos that showed him recklessly riding his motorcycle on one wheel and speeding.

The District Court held oral argument on the pre-trial motions and denied the bifurcation motion. While the District Court noted the unusually gruesome nature of Plaintiff's injuries, it reasoned that a jury would be able to follow its instructions and separate issues of liability and damages. The District Court also rejected Defendants' argument that issues of liability and damages were completely distinct. The Court reasoned that testimony about the location and severity of Plaintiff's injuries would also be an important part of Plaintiff's liability case because that evidence was relevant to whether or not Plaintiff was speeding.

The District Court also granted Plaintiff's *in limine* motions. The District Court explained that although Plaintiff's lack of a motorcycle license was probative, it

was too prejudicial to admit, especially because there was no actual evidence that Plaintiff did not know how to ride a motorcycle. And, with respect to the reckless riding videos that Plaintiff had taken of himself just months before the accident, the District Court reasoned that introduction of the videos would be impermissible character evidence against Plaintiff. Nor could they be introduced as evidence of habit, the District Court held, because the videos did not establish that Plaintiff rode his motorcycle with any sort of regular recklessness.

C. The Trial

1. Voir Dire

The parties proceeded to trial. At voir dire, Jury Panel Member #27, like Patten, was a commercial trucker and was familiar with the "crazy stuff" motorcyclists do on the road. [JA485.] Panel Member #27 indicated that his son suffered from a chromosomal disease and was, like Plaintiff, in a wheelchair. When asked by defense counsel whether Panel Member #27 could "put [ ] aside" thinking about his disabled son when "see[ing] Mr. Sweigart every day," Panel Member #27 responded that he could not and that he might be "start[ing] out a little bit ahead of [Defendants]." [JA487, 492.] The District Court engaged in further colloquy and asked the potential juror whether he could put his son's condition and other biases aside to render a fair verdict. Panel Member #27 assured the Court that he would and agreed with Plaintiff's counsel that it would not be fair if the jury returned a verdict for Plaintiff just because he was in a wheelchair. The District

Court denied the Defendants' challenge to strike Jury Panel Member #27 for cause stating that there was "no question" after observing the potential juror's demeanor that he could be fair. [JA494.]

2. Defendants' Motion for a Mistrial

Plaintiff called his first witness, Dr. Michels, one of his treating emergency room orthopedic surgeons. Dr. Michels described Plaintiff's injuries while displaying a medically accurate, but far from lurid, illustration admitted into evidence representing the damage inflicted on Plaintiff's pelvis. The District Court, noticing that Juror #2 appeared to have a strong reaction to the evidence, interrupted Dr. Michels's testimony to ask if Juror #2 was feeling well. Juror #2 responded that he was not and fainted. [***Id.***] In the presence of the other jurors, Dr. Michels immediately asked the District Court to call an ambulance and stepped into the jury box to render aid to Juror #2. One of Plaintiff's other treating surgeons, Dr. Moshkovsky, who was also in the courtroom, stepped in as well to assist. [***Id.***] The Court called a recess while Juror #2 received treatment. Outside the presence of the jury, Juror #2 was taken out of the courtroom and transported to a local hospital.

Defendants moved for a mistrial out of concern that the aid rendered to Juror #2 by Plaintiff's physician witnesses in the presence of the jury endowed these witnesses with a "halo effect" that would unfairly prevent the jury from assessing their credibility and testimony. [JA515.] Defendants also argued that the other jurors

may have been improperly influenced by observing Juror #2's strong reaction to the evidence. The District Court disagreed. The Court reasoned that the witness physicians were admitted as experts to testify as Plaintiff's treating physicians and describe Plaintiff's injuries.

The District Court called the jury back into the courtroom and informed them that Juror #2 had been transported to the hospital. In open court, the District Court asked the jury by a show of hands whether they could no longer fairly evaluate Plaintiff's physician witnesses after witnessing them rendering aid to Juror #2. No juror raised his or her hand. The District Court then confirmed that each juror was "prepared to proceed and render a fair and just verdict." [JA523.] Each juror nodded.[2] The District Court then dismissed Juror #2.[3]

3. The Verdict and Post-Trial Motions

The jury returned a verdict in Plaintiff's favor. It found Patten 95% responsible for the accident and awarded Plaintiff $25 million in damages. The District Court denied Defendants' motion for a new trial including, relevant here, a challenge to the District Court's jury charge instructing on Pennsylvania's sudden emergency doctrine. This doctrine lowers the standard of care for

2. Defense counsel did not request that the District Court query each juror individually.

3. Juror #2 later returned to the courtroom after leaving the hospital and the District Court, outside the presence of the other jurors, formally dismissed him.

a party confronted with a sudden and unforeseeable occurrence. Defendants argued that the District Court erred in giving the instruction because Sweigart did not find himself in a sudden emergency situation; rather, he created a sudden emergency situation by recklessly failing to reduce his speed upon noticing Patten's truck. The Court denied Defendants' post-trial motion and entered judgment against Defendants. This timely appeal followed.[4]

II.

A. The District Court Did Not Abuse its Discretion in Denying Defendants' Request To Bifurcate

A district court, in its sound discretion, "[f]or convenience, to avoid prejudice, or to expedite and economize . . . may order a separate trial of one or more separate issues [or] claims. . . ." FED. R. CIV. P. 42(b). We trust district courts with "broad discretion" in deciding whether to bifurcate issues of damages and liability. *Idzojtic v. Pa. R.R. Co.*, 456 F.2d 1228, 1230 (3d Cir. 1972). Thus, we will only overturn a denial of bifurcation for an abuse of discretion. *Barr Lab'ys, Inc. v. Abbott Lab'ys*, 978 F.2d 98, 105 (3d Cir. 1992).

Defendants argue that the District Court abused its discretion in denying bifurcation because the catastrophic

4. The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1332. We have final order jurisdiction over this appeal pursuant to 28 U.S.C § 1291.

nature of Plaintiff 's injuries made it impossible for a jury to impartially separate issues of damages and liability. We disagree. Bifurcating a trial into separate liability and damages sections is the exception, not the rule. *See Lis v. Robert Packer Hosp.*, 579 F.2d 819, 824 (3d Cir. 1978) ("[S]eparation of issues for trial is not to be routinely ordered.") (quoting FED. R. CIV. P. 42(b) Advisory Committee Notes). Defendants offer no persuasive reason to apply the exception here other than that this case, like many personal injury cases, involved serious injuries. But to hold that a trial court abuses its discretion in denying bifurcation just because a case involves serious personal injuries would flip the presumption against bifurcation on its head. Indeed, it would require courts to grant bifurcation any time a case involved serious personal injuries. *Cf. Nester v. Textron, Inc.*, 888 F.3d 151 (5th Cir. 2018) (affirming denial of bifurcation in personal injury suit where owner was run over by vehicle while it was unmanned, rendering her a quadriplegic). The wide discretion inherent in Rule 42(b) does not require such a result. *Lis*, 579 F.2d at 824 ("Thus, a routine order of bifurcation in all negligence cases is a practice at odds with our requirement that discretion be exercised and seems to run counter to the intention of the rule drafters.").

Here, the District Court specifically instructed the jury to keep issues of damages and liability separate. *See Thabault v. Chait*, 541 F.3d 512, 530-31 (3d Cir. 2008) (affirming denial of bifurcation where district court instructed jury to compartmentalize evidence). The Court also instructed the jury that sympathy could play no part in deciding whether Plaintiff met his burden of proof and,

crucially, that the mere fact that injuries occurred did not mean that Plaintiff was entitled to recover damages. We must "presume that the jury follow[ed] such instructions" to "compartmentalize the evidence." *United States v. Urban*, 404 F.3d 754, 776 (3d Cir. 2005); *see also Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1021 (9th Cir. 2004) (explaining that because evidence of liability and damages often overlap, "the normal procedure is to try compensatory and [ ] damage claims together with appropriate instructions to . . . the jury[.]") (internal quotation marks omitted).[5]

Defendants cite no case where we have found a district court to have abused its discretion in denying a bifurcation motion. And the primary case they do cite, *Estate of Diaz v. City of Anaheim*, 840 F.3d 592 (9th Cir. 2016), is distinguishable.[6] In *Estate of Diaz*, the Ninth

5. Defendants argue that these instructions were insufficient because they were "general" and did not "expressly direct[ ] the jury to compartmentalize" damages and liability evidence. [Reply Br. at 7 n.1.] But Defendants never appear to have asked for a more specific curative or limiting instruction, nor do they challenge the lack of such an instruction on appeal.

6. Defendants also briefly mention *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937 (4th Cir. 2020), where the Fourth Circuit vacated a district court's denial of bifurcated trials on liability and punitive damages and remanded for the limited purpose of determining the proper amount of punitive damages without considering certain financial evidence of the defendant corporation's parent companies' ability to pay. But in *McKiver*, the district court failed to instruct the jury that the inflammatory financial evidence, which exposed the jury to the parent companies'

Circuit held that a district court abused its discretion to deny bifurcation where graphic and prejudicial evidence of the plaintiff posing with firearms and displaying gang signs had little to no relevance with respect to either liability or damages. *Id.* at 603. Here, by contrast, testimony regarding Plaintiff 's injuries was relevant for both liability *and* damages. Defendants' theory of the case was that Plaintiff was liable (and his injuries so terrible) because he was speeding and did not have time to break. Plaintiff denied that he was speeding and introduced testimony from his treating surgeons that his injuries were not consistent with a high-energy impact caused by speeding.

Finally, even assuming the District Court bifurcated the trial, the jury would still have known that this was a horrific accident. The jury would have seen Plaintiff in a wheelchair. And they would have known that he slammed into a truck while riding a motorcycle. We therefore cannot conclude that Defendants have met their burden of demonstrating that the District Court abused its discretion with respect to bifurcation.

---

ability to pay, while properly admitted for purposes of liability, could not be considered in determining whether punitive damages should be imposed. *Id.* The Fourth Circuit also recognized that bifurcation was not required and that an instruction to compartmentalize the evidence would have also been proper. *Id.* at 974-76.

B. The District Court Did Not Abuse Its Discretion In Denying Defendants' Request for a Mistrial

"We review a denial of a motion for a mistrial for an abuse of discretion." *United States v. Savage*, 85 F.4th 102, 124 (3d Cir. 2023). Defendants argue that once Juror #2 fainted from hearing the testimony of Plaintiff's extensive injuries and Plaintiff's physician witnesses came to his aid, "the damage was done." [Reply Br. at 12.] The District Court was therefore required to declare a mistrial, Defendants argue. **[Reply at 12.]**

Here, too, we disagree. The District Court sufficiently questioned the remaining jurors who each affirmed that his or her impartiality was not affected. When a juror has a strong reaction to graphic evidence and there are concerns that the juror's reaction may impact the impartiality of the remaining members of the jury, it is not an abuse of discretion to deny a mistrial motion upon questioning the jury and confirming that they can remain impartial. *See United States v. Black*, 369 F.3d 1171, 1176 (10th Cir. 2004) (no abuse of discretion in denying mistrial where district court questioned jurors who all affirmed that their impartiality was not affected by another juror fainting from a gruesome autopsy photograph). Here, the District Court's determination that each juror was sincere in affirming that he or she could remain impartial is entitled to due deference. *Skilling v. United States*, 561 U.S. 358, 396-97 (2010).

Defendants cite to state court cases where a court granted a mistrial based on medical assistance rendered

to a juror by a physician-witness. These cases are distinguishable. Each arose in the context of a medical malpractice trial and involved the *defendant*-physician rendering aid to a juror. *Heidt v. Argani*, 214 P.3d 1255 (Mont. 2009) (defendant-doctor assisting juror who became ill during graphic closing argument); *see also Campbell v. Fox*, 498 N.E.2d 1145 (Ill. 1986) (same); *Reome v. Cortland Mem'l Hosp.*, 152 A.D.2d 773 (N.Y. App. Div. 1989) (same). As the Montana Supreme Court explained, the effect of seeing a "defendant doctor reacting to a real-life situation and apparently successfully delivering life-saving care" is "immeasurable." *Heidt*, 214 P.3d at 1259. Here, by contrast, Plaintiff's treating physicians were not defendants in a civil malpractice case – they were admitted as experts and testified as Plaintiff's treating physicians, describing Plaintiff's injuries to the jury. The performance of their medical duties in treating Plaintiff was not at issue in this case. Thus, their rendering aid to Juror #2 did not endow them with any prejudicial "halo effect" that caused irreparable damage to the integrity of the trial. We will not disturb the District Court's denial of the mistrial motion.

C. The District Court Did Not Abuse Its Discretion in Failing to Strike Jury Panel Member #27 For Cause

Our review of a ruling on a motion to strike a juror for cause is for "manifest error – a most deferential standard." *United States v. Nasir*, 17 F.4th 459, 467 (3d Cir. 2021) (citing *Skilling*, 561 U.S. at 396). As the Supreme Court has emphasized, jury selection is "particularly within

the province of the trial judge," who has the benefit of physically observing a potential juror, listening to their answers, observing their mannerisms, and ultimately deciding whether they can be fair and impartial in a given case. *See Skilling*, 561 U.S. at 386. Accordingly, the Supreme Court has cautioned against "second-guessing the trial judge's estimation of a juror's impartiality." *Id.* (quoting *Ristaino v. Ross*, 424 U.S. 589, 594-595 (1976)).

Nonetheless, Defendants ask us to second-guess the District Court's assessment of Panel Member #27's impartiality. We will not. The District Court, observing Panel Member #27's demeanor, stated that there was "no question in [its] mind" that the juror could be fair and impartial. [JA494.] Defendants argue that Panel Member #27 "openly admitted that because of his son's [disability and wheelchair use], he could not be fair towards Defendants[.]" [Opening Br. at 33.] But while Panel Member #27 stated that he could not put aside thinking about his son while looking at Sweigart, he denied that his son's condition – which, as the District Court noted, was due to a chromosomal disorder, not a car accident – would prevent him from being impartial. Indeed, Panel Member #27 stated unequivocally under questioning by the District Court that he could be fair to both Mr. Sweigart as well as the Defendants. Defendants characterize the District Court's colloquy with Panel Member #27 as "forceful." [Opening Br. at 36]. But when a juror admits concerns about partiality, it is the district court's responsibility to ask follow-up questions "to determine whether [the juror is] actually biased." *Nasir*, 17 F.4th at 468. The District Court did so and, listening to

Panel Member #27's answers, concluded that there was no doubt that he could be a fair and impartial juror. Without the benefit of what the District Court saw and heard, we cannot, on a cold record, reverse its decision declining to strike Panel Member #27 for cause.

D. The District Court Did Not Abuse its Discretion in Instructing the Jury on the Sudden Emergency Doctrine

Defendants argue that Plaintiff should not have benefited from an instruction on Pennsylvania's sudden emergency doctrine. This doctrine provides that a "person confronted with a sudden and unforeseeable occurrence, because of the shortness of time in which to react, should not be held to the same standard of care as someone confronted with a foreseeable occurrence." *Lockhart v. List*, 665 A.2d 1176, 1180 (Pa. 1995). The sudden emergency doctrine only applies "to a party who suddenly and unexpectedly finds him or herself confronted with a perilous situation which permits little or no opportunity to apprehend the situation and act accordingly." *Id.* Defendants argue that the doctrine does not apply because trial testimony established that it was Plaintiff – not Defendants – who created the emergency by failing to reduce his speed.

We review the District Court's instruction on the sudden emergency doctrine for abuse of discretion, to "determine whether, taken as a whole, the instruction properly apprised the jury of the issues and the applicable law." *Donlin v. Philip Lighting N. Am. Corp.*, 581 F.3d

73, 78-79 (3d Cir. 2009) (citing *Dressler v. Busch Entm't Corp.*, 143 F.3d 778, 780 (3d Cir. 1998)). Even where a jury instruction contains a mistake, that instruction does not constitute a reversible error unless "it fails to fairly and adequately present the issues in the case." *Id.* at 79 (internal quotation marks omitted).

We find no error with the District Court's jury instructions. Consistent with Pennsylvania law, the District Court properly balanced the sudden emergency doctrine with an instruction on Pennsylvania's assured clear distance ahead rule. The clear distance ahead rule requires "a driver to control the speed of his or her vehicle so that he or she will be able to stop within the distance of whatever may reasonably be expected to be within the driver's path." *Lockhart*, 665 A.2d at 1180 (emphasis omitted). As the Pennsylvania Supreme Court has explained, "where the evidence is such that reasonable minds could differ as to whether a sudden emergency actually existed, both [the sudden emergency and the assured clear distance ahead] charges should be given." *Id.* at 1183.

Here, reasonable minds could differ as to whether a sudden emergency existed. Sweigart testified that he did not see Patten's truck until he was approximately 550 feet from the intersection. At that point, Patten's truck was creeping towards the intersection. Sweigart did not reduce his speed because he believed that Patten would come to a complete stop prior to turning left through the intersection. By the time Sweigart realized Patten was indeed making a turn, he only had 3.2 seconds to brake.

Defendants' own crash reconstructionist conceded that Sweigart could have been travelling at a lawful speed prior to hitting the brakes. So, because Plaintiff introduced testimony creating a reasonable factual dispute regarding whether he found himself in a sudden emergency situation, the jury could have found *either* that Plaintiff was thrust into a sudden emergency *or* that he was driving at a speed greater than would permit him to bring his motorcycle to a stop within any clear distance ahead of the truck. We thus find no error in the District Court's instruction on the sudden emergency doctrine charge.

E. The District Court Did Not Abuse Its Discretion in Excluding Evidence of Plaintiff's Lack of a Motorcycle License and the Reckless Riding Videos

Defendants argue that the District Court erred in excluding evidence of Plaintiff's lack of a motorcycle license and videos of Plaintiff riding his motorcycle recklessly. Accordingly, Defendants argue, "[t]he jury was unable to evaluate relevant evidence bearing on Plaintiff's own negligence." [Opening Br. at 44-45.]. "The admissibility of evidence is within the discretion of the trial judge, and admissibility rulings will not be disturbed on appeal absent an abuse of discretion." *Gordon v. Lewistown Hosp.*, 423 F.3d 184, 215 n.21 (3d Cir. 2005) (citing *Affiliated Mfrs., Inc. v. Aluminum Co. of Am.*, 56 F.3d 521, 525-26 (3d Cir. 1995)). We find no abuse of discretion with respect to the District Court's evidentiary rulings.

Appendix A

1. Plaintiff's Lack of a Motorcycle License

The District Court, on the record at oral argument, balanced, under Federal Rule of Evidence 403, the probative value of Plaintiff's lack of a motorcycle license against its prejudicial effect. "[W]hen a court engages in a Rule 403 balancing and articulates on the record a rational explanation, we will rarely disturb its ruling." *United States v. Finley*, 726 F.3d 483, 491 (3d Cir. 2013) (internal quotation marks omitted); *United States v. Sussman*, 709 F.3d 155, 173 (3d Cir. 2013) (The District Court's "discretion is construed especially broadly in the context of Rule 403.") (internal quotation marks omitted). The District Court concluded that introduction of Plaintiff's lack of a license, while probative, was simply too prejudicial to be admitted because there was no evidence that there was a causal connection between the accident and Plaintiff's lack of a license and no evidence that Plaintiff did not know how to drive a motorcycle at the time of the accident. Defendants articulate no basis in the record or law that persuades us to the contrary. Defendants argue that they should have been afforded a fair opportunity to counter Plaintiff's competency to operate a motorcycle. But the District Court did afford Defendants that opportunity, just without evidence of Plaintiff's lack of a license. Indeed, Defendants introduced evidence to convince the jury that Plaintiff lacked motorcycle competency, eliciting on cross-examination that Plaintiff (i) had no formal motorcycle training, (ii) was a self-taught motorcyclist, and (iii) that he did not read his motorcycle's owner's manual. We will not disturb the District Court's reasoned decision to exclude evidence of Plaintiff's lack of a motorcycle license.

2. Plaintiff's Reckless Riding Videos

Nor will we disturb the District Court's discretionary decision to exclude video evidence of Plaintiff riding his motorcycle recklessly. Federal Rule of Evidence 404(b) prohibits the admission of prior bad acts for the purpose of showing that an individual has a propensity or disposition to act in accordance with his prior bad acts. *Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 520 (3d Cir. 2003). Here, admission of Plaintiff recklessly popping "wheelies" and speeding in the months before the accident could not be introduced to show that Plaintiff was driving recklessly on the morning of the accident. *See Sparks v. Gilley Trucking Co., Inc.*, 992 F.2d 50, 53 (4th Cir. 1993) (Rule 404(b) should have prevented the introduction of evidence of plaintiff's prior speeding tickets)

Recognizing as much, Defendants instead argue that the videos are evidence, under Federal Rule of Evidence 406, of Plaintiff's habit of riding recklessly. Not so. Habit evidence under Rule 406 reflects a "semi-automatic" repeated response in a specific situation. *Becker v. ARCO Chem. Co.*, 207 F.3d 176, 204 (3d Cir. 2000). The videos of Plaintiff's reckless riding offered only snapshots of how Plaintiff rode his bike on a few occasions. Evidence of habit must be both "regular" and "specific." *See* FED. R. EVID. 406 Advisory Committee's Note (describing "habit" as a "regular response to a repeated specific situation"). The videos were neither. They did not establish, for example, that Plaintiff always sped on Morgantown Road – where the accident occurred – or that he always sped early in the morning on Morgantown Road, or any road for that

matter.[7] Plaintiff's stunts and speeding simply cannot show that he was stunting or speeding every time he rode his bike. We thus find no abuse of discretion with respect to the District Court's exclusion of the reckless riding videos.

VI.

For the foregoing reasons, we will affirm the judgment of the District Court.

---

7. One video did involve Plaintiff speeding on Morgantown Road on a Sunday afternoon. While that video would have been probative, albeit inadmissible under Rule 404(b), of the fact that Plaintiff sometimes sped on Morgantown Road, it could not, alone, establish any habit of Plaintiff speeding on Morgantown Road.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED OCTOBER 4, 2022

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 21-922

TRAVIS S. SWEIGART,

Plaintiff,

v.

VOYAGER TRUCKING CORP., KEVIN J. PATTEN, TRANSFER STATION SERVICES INC., TRANSFER TRAILER SERVICES INC., BLUE & GREEN TRUCKING & HAIR, LLC, KEVIN J. PATTEN d/b/a BLUE & GREEN TRUCKING & HAIR, LLC, and COVANTA SUSTAINABLE SOLUTIONS, LLC,

Defendants.

ORDER

AND NOW, this 4th day of October, 2022, upon consideration of the defendants' Motion to Bifurcate Trial Pursuant to Fed.R.Civ.P. 42 (Doc. No. 118), and the plaintiff's Response to Defendants' Motion (Doc. No.

133), it is hereby **ORDERED** that the defendants' motion is **DENIED**.[1]

---

1. Under Federal Rule of Civil Procedure 42(b), the court can bifurcate a trial "[f]or convenience, to avoid prejudice, or to expedite and economize [. . .]." Fed. R. Civ. P. 42(b); *see also Emerick v. U.S. Suzuki Motor Corp.*, 750 F.2d 19, 22 (3d Cir. 1984) ("[T]he trial court, in the exercise of its discretion, must weigh the various considerations of convenience, prejudice to the parties, expedition, and economy of resources.").

The decision to bifurcate "is a matter to be decided on a case-by-case basis and must be subject" to an informed, discretionary decision made by the trial judge. *Lis v. Robert Packer Hosp.*, 579 F.2d 819, 824 (3d Cir. 1978). Rule 42(b) is "sweeping in its terms and allows the district court, in its discretion, to grant a separate trial of any kind of issue in any kind of case." 9A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 2389 (3d ed. 2008) (emphasis added). In this way, the court is "given broad discretion in reaching its decision whether to separate the issues of liability and damages." *Idzojtic v. Pa. R.R. Co.*, 456 F.2d 1228, 1230 (3d Cir. 1971) (internal citation omitted). The Third Circuit reviews a decision to bifurcate for an abuse of discretion. *Lundy v. Hochberg*, 79 F. App'x 503, 504 (3d Cir. 2003).

The defendants move to bifurcate the trial such that the issue of liability would be determined first, followed by the determination of damages, if necessary. In determining whether the court should bifurcate, the court considers "convenience, prejudice to the parties, expedition, and economy of resources." *Emerick*, 750 F.3d at 22. In considering these factors, the court concludes that bifurcating the liability from damages is not necessary or appropriate to ensure a just verdict.

Appendix B

BY THE COURT:

/s/ *Edward G. Smith*
EDWARD G. SMITH, J.

APPENDIX C — EXCERPTS OF TRANSCRIPT, FILED AUGUST 9, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Case No. 5:21-cv-00922-EGS

TRAVIS S. SWEIGART,

Plaintiff,

v.

VOYAGER TRUCKING CORP., *et al.*,

Defendants.

August 9, 2022
9:31 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE HONORABLE EDWARD G. SMITH
UNITED STATES DISTRICT COURT JUDGE

[34] opinion is, particularly in the absence of depositions of them so that we didn't get into that.

THE COURT: Now -- and please have a seat. On the bifurcation issue, I came in here today prepared to deny the motion to bifurcate; I'm not going to deny it today.

The reason I was going to deny it is it is true that in almost every case, there is -- the jury must set aside the damages and first determine the liability. What made this case a little different -- and Attorney Wynkoop has kind of got me rethinking this issue -- is what would the real harm be? If there's not a lot of overlap, obviously we've got to deal with that, surgeon overlap. But if there's not, what would be the real problem? Why would it take so much longer to have the jury first deliberate, you know, put on all the evidence on liability, send the jury out, give them a verdict slip, you know, give them instructions on liability. Bring them back, take the verdict on liability.

Then put on the damages evidence. Send them back, come up with a damages number, this is assuming that there's a victory by the plaintiffs on liability. Why would that take so much more time?

And the reason it's especially important in this case if we were going to do it is I've heard about this case, doctors saying they've never seen someone this badly injured who survived. These are extraordinary damages, extraordinary [35] injuries that no human -- unless you don't have a heart -- could possibly not be affected by that. And no matter what they're going to be affected by, he's going to be in the courtroom, etc. But if they hear all the details from a doctor about the specifics of those injuries, that's going to be one that I'm going to have a tough time with an instruction keeping them where they can separate out the emotion of those injuries from their very important determination of liability.

So this is a case -- the only other one I have bifurcated was one where the plaintiffs agreed with bifurcation because they knew they were going to lose on liability and they didn't want to waste all the money bringing the experts on damages. So they wanted to bifurcate because they knew they were going to lose on liability.

What used to happen in Philadelphia County, I forget her name now, the judge that was in charge of the asbestos docket in Philadelphia County --

MR. WAGNER: Judge Ross?

THE COURT: Yes. She had a policy where they did damages first, and then after the jury came back with a verdict on damages, then they went to the liability portion.

Well, the defense bar was outraged by that because here you go, you hear the terrible illness of mesothelioma, and the terrible way you die, and you suffocate, and etc., and now the jury's come up with damages, and then they go to liability [36] to take those damages away. And it's very hard after you've come up with damages to then be asked to now determine liability, and take those numbers away. So that's an example of bifurcation where the plaintiffs were all in favor of it.

But here, wouldn't you love to do the damages portion first, come up with that number, and then move to the liability portion? I'm still leaning towards not granting bifurcation because I do believe in jurors, and I do believe we can pick a jury that is not going to be shocked, and

with my instructions about not allowing these pictures, not allowing these injuries to impact on your judgment. But this one has me thinking much more seriously than most just because of the extraordinary nature of the injuries.

So I'm leaning towards denying it, but I haven't made that final decision yet on the bifurcation motion.

MR. WAGNER: Your Honor, with --

MS. WYNKOOP: Your Honor --

THE COURT: Yes?

MS. WYNKOOP: Oh, sorry.

MR. WAGNER: Go ahead.

THE COURT: Yes, Counselor?

MS. WYNKOOP: Your Honor, if I could just add -- thank you for your consideration. There are eight Plaintiff liability experts, and this is anything but a simple case. I trust the jury, but it's a lot.

APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED AUGUST 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2397

TRAVIS SWEIGART

v.

VOYAGER TRUCKING CORP., KEVIN J. PATTEN,
BLUE & GREEN TRUCKING & HAIR, LLC,
and KEVIN J. PATTEN d/b/a BLUE & GREEN
TRUCKING & HAIR, LLC

KEVIN J. PATTEN; BLUE & GREEN TRUCKING
& HAIR LLC; KEVIN J. PATTEN,
DOING BUSINESS AS BLUE &
GREEN TRUCKING & HAIR, LLC,

Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
District Court No. 5:21-cv-00922
District Judge: Honorable Edward G. Smith

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY,

Appendix D

PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, SMITH,* *Circuit Judges*, and BUMB, *Chief District Judge*†

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATE: August 27, 2024
CJG/cc: Daniel Bencivenga, Esq.
Harold I. Goodman, Esq.
Charles P. Hehmeyer, Esq.
Stephen E. Raynes, Esq.
Michael T. Droogan, Jr., Esq.
Maureen M. McBride, Esq.
Andrew P. Stafford, Esq.

---

* Judge Smith's and Judge Bumb's vote is limited to panel rehearing only.

† Honorable Renée Marie Bumb, Chief District Judge of the United States District Court for the District of New Jersey, sitting by designation.