

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

WILLOUGHBY EASTLAKE
CITY SCHOOLS, et al.,

Plaintiffs-Appellants,

- VS -

AMERICAN FIREWORKS
COMPANY, et al.,

Defendant-Appellee.

CASE NO. 2026-L-0019

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2024 CV 000164

OPINION AND JUDGMENT ENTRY

Decided: August 31, 2026

Judgment: Affirmed

Douglas J. May, Travelers Staff Counsel Ohio, P.O. Box 64093, St. Paul, MN 55164
(For Plaintiffs-Appellants).

Dennis R. Fogarty, Litchfield Cavo L.L.P., 35000 Chardon Road, Suite 100, Willoughby
Hills, OH 44094 (For Defendant-Appellee).

MATT LYNCH, P.J.

{¶1} This appeal arises from a jury trial in the Lake County Court of Common Pleas concerning property damage allegedly caused by a fireworks display conducted on July 4, 2019, by defendant-appellee American Fireworks Company (“AFC”) on property owned by plaintiff-appellant Willoughby Eastlake City Schools (“the School”) and insured by plaintiff-appellant Travelers Property Casualty Company of America (“Travelers”). At issue on appeal are the trial court’s directed verdict, several evidentiary rulings, and the jury’s damages award. We affirm.

Facts and Procedural History

{¶2} On July 4, 2019, AFC conducted a fireworks display on the grounds of the School pursuant to a contract (“the Contract”) with the City of Willoughby (“the City”). The School and Travelers (collectively “appellants”) initially filed suit in 2021 and refiled their complaint against AFC¹ on February 5, 2024, asserting claims of negligence, negligence per se, strict liability, res ipsa loquitur, breach of express and implied warranty, and breach of contract. Appellants alleged that incendiary debris fell across the School’s new and yet-to-be warranted thermoplastic/polyvinyl roof, necessitating membrane replacement and other repairs totaling \$1,285,357.57. Travelers indemnified the School for the roof membrane replacement cost of \$1,032,677.15.

{¶3} As stated in their trial brief, appellants specifically alleged the following, in pertinent part:

Prior to July 4, 2019, [AFC] had never conducted pyrotechnics on [the School] while the brand-new addition to the Senior Center/YMCA/school complex stood on the site. . . . [AFC] failed to take the new building into consideration, choosing a launch site that placed the new roof membrane within the “debris zone.” Despite National Fire Protection Association [“NFPA”] code requiring [AFC] to warn any building owners with property inside the debris zone prior to the display, defendants did not speak with [the School]. Further, AFC failed to name [the School] as an additional insured pursuant to its contract with the City of Willoughby as it was required to do concerning any owner with property inside the debris zone. In this and in other respects, [AFC] breached duties of workmanship within the pyrotechnical field in addition to breaching duties to [the School] as a third party beneficiary to [the City] contract. Further, Defendants agreed to be strictly liable for any damages to [the School] building when Erik Johansen signed the permit application with [the City]. Finally, Defendants are negligent per se pursuant to violations of the Ohio Fire Code adopting NFPA sections.

1. Erik Johansen, an AFC employee, was also named as a defendant. Prior to the jury deliberating and reaching its verdict in this matter, the parties stipulated on the record to Johansen’s dismissal. The trial court subsequently entered an order dismissing him as a party to this litigation.

Appellants also alleged the following factual issues remained in dispute for trial: (1) “whether the roof membrane required replacement or alternatively whether it could be repaired by patch working in a manner that would be warranted by the manufacturer”; and (2) “whether [the School] is an intended third-party beneficiary requiring that it be listed as an additional insured pursuant to [the Contract].”

{¶4} A jury trial was held over five days in February 2025. At the outset, the trial court ordered redactions from certain exhibits regarding insurance coverage. In the Contract (Exhibit 1), the court ordered redaction of the phrase, “in the amount of \$10 million dollars combined single limit,” so that the remaining provision read as follows:

DISPLAY COMPANY [AFC] agrees to provide, deliver and display to and for the benefit of CLIENT [the City] a certain fireworks show along with operators to fire the display(s). DISPLAY COMPANY shall be responsible for any and all wages, expenses and workers compensation for any and all persons employed by DISPLAY COMPANY and will provide to the CLIENT public liability and property damage insurance . . . , and will add the sponsor of the project and the property owner of the location as an additional insured. In addition, any property owner in the fallout zone and any municipality where the show is being performed (if applicable) that requests to be named as an additional insured, and is approved by the CLIENT that is providing a fireworks display, should be added as an additional insured, for the fireworks display

{¶5} The court also ordered redaction of the “Liability” section from the Application for Exhibition Permit (found in Exhibits 5, 6, 11-13, and 11-14), pertaining to AFC’s insurance coverage for the fireworks display.

{¶6} The court entirely excluded the Certificate of Liability Insurance (“COI”) from Exhibit 11-14. However, this document, the COI, was also included in Exhibit 6, and in this location it was neither redacted nor excluded from evidence.

{¶7} At the close of appellants’ case-in-chief, AFC moved for a directed verdict on “plaintiffs’ claims for damages due to the alleged failure of [AFC] to add [the School]

as an additional insured to the policy as there was no testimony that they failed to do that.” Appellants’ counsel admitted that the COI (in Exhibit 6) does name the School as an additional insured (in very fine print that was missed until right before trial), but recounted that the School’s director of operations and security testified there was no other coverage and that the adjuster for Travelers, the School’s insurer, testified he had found no other coverage. Appellants’ counsel also noted that AFC’s insurer, T.H.E. Insurance Company (“T.H.E.”), had not responded to their correspondence about any additional-insured coverage. AFC’s counsel noted that T.H.E. is not a party to this case. The trial court granted AFC’s motion for a directed verdict from the bench.

{¶8} To support their claims and requests for damages, appellants relied on roof personnel, manufacturer representatives, and an independent adjuster.

{¶9} AFC’s evidence and theory at trial emphasized that the roof’s original installation was defective, manufacturer Johns Manville had not issued a warranty pending corrective work, and post-event observations did not reveal burn-through damage attributable to fireworks but did reveal construction defects and patching. AFC’s witnesses included architect Robert Fiala and forensic architect Richard Kraly.

{¶10} The court instructed the jury on the remaining theories of negligence, negligence per se, and strict liability (based on the signed Application for Exhibition Permit that AFC had submitted to the City). The court also instructed that if the jury found AFC had agreed to be strictly liable for damages suffered by the fireworks display, then the jury would not have to determine whether AFC was negligent but would have to determine whether the fireworks display proximately caused damage to the roof and, if so, what the cost to repair that damage was. The jury was further instructed, “Plaintiffs allege that the

damage to the property necessitated complete replacement of the polyvinyl membrane of the roof”; “Defendant denies that full membrane replacement was necessary”; and “If you find for the plaintiffs, you will determine an amount of money that will reasonably compensate the plaintiffs for the damage to the property.”

{¶11} The jury found that AFC did not breach a duty of care to plaintiffs and did not violate a statute that imposes a specific duty, returning a verdict in favor of AFC on plaintiffs’ claims of negligence and negligence per se. The jury further found that AFC agreed to be strictly liable to plaintiffs and proximately caused damage to the roof of the School’s property, returning a verdict in favor of plaintiffs on their claim of strict liability and awarding damages in the amount of \$89,169.00.

{¶12} The trial court entered judgment reflecting the jury verdict on February 11, 2025, but did not journalize the directed verdict or include Civ.R. 54(B) language. Accordingly, we dismissed appellants’ appeal therefrom for lack of a final, appealable order. *Willoughby Eastlake City Schools v. Am. Fireworks Co.*, 2026-Ohio-66 (11th Dist.).

{¶13} On February 6, 2026, the trial court journalized an amended judgment entry, which added that “[t]he court granted a directed verdict in favor of Defendant on Plaintiff’s claim for breach of contract [additional insured] on February 6, 2025 (after Plaintiff rested) based on Plaintiff’s Exhibit 6.”

{¶14} This appeal followed.

Assignments of Error

{¶15} Appellants present six assignments of error challenging the trial court’s directed verdict, several evidentiary rulings, and the jury’s damages award:

[1.] The trial court committed reversible error when it granted [AFC’s] Motion for Directed Verdict on Count Six of the Complaint, which sought relief for

[AFC's] failure to insure [the School's] property from which the fireworks display was launched, thereby breaching the third-party beneficiary contract.

[2.] The trial court committed reversible error when it granted [AFC's] verbal *Motion in Limine* to exclude [appellants'] Exhibit 11 and Exhibit 6 p. 2 "Certificate of Liability Insurance," unfairly excluding admissible evidence as to Count VI, breach of promise to secure property insurance for third-party beneficiary [the School].

[3.] The trial court committed reversible error when it excluded the opinions of independent property claims adjuster, Adam Searcy, who was retained by [AFC's] insurer, T.H.E. Insurance Company, to determine repairability versus replacement of the membrane, and the cost of recommended remediation and the cause of loss.

[4.] The Court erred in preventing [appellants] from cross examining [AFC's] expert Robert Fiala regarding the Sedgwick liability report which was listed in the Witness's report as a document he reviewed.

[5.] The Court erred in ordering redaction of [appellants'] Exhibit 1 to exclude the \$10,000,000 of Promised Property Coverage that AFC's contract with [the City] required the displayer to purchase on behalf of launch location owner, [the School].

[6.] The jury's \$89,169.00 award for damages, where the membrane replacement cost in the amount of \$1,032,677.15 was unrefuted, is against the manifest weight of evidence.

{¶16} Appellants claim that the trial court made a series of consequential errors with respect to damages that allowed the jury to be led astray in awarding its grossly insufficient and unfounded \$89,169.00 verdict. Appellants request reversal of the court's granting of directed verdict and a retrial on their contractual claim and damages.

Directed Verdict

{¶17} In their first assignment of error, appellants argue that the trial court erred when it granted AFC's motion for directed verdict because they presented sufficient evidence from which reasonable minds could conclude that AFC breached its promise to secure \$10 million in property insurance covering the School and to report the claim for

adjustment. Appellants maintain that, following notice of the claim, AFC merely submitted a claim for liability coverage, all the while denying fault.

{¶18} A motion for directed verdict presents a question of law, i.e., the legal sufficiency of the evidence to submit the case to the jury. *Ruta v. Breckenridge-Remy Co.*, 69 Ohio St.2d 66, 68 (1982). Accordingly, our review of the trial court's ruling on a motion for directed verdict is de novo. *White v. Leimbach*, 2011-Ohio-6238, ¶ 22.

{¶19} “When a motion for a directed verdict has been properly made [under Civ.R. 50], and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.” Civ.R. 50(A)(4).

{¶20} “In addition to Civ.R. 50(A), it is well established that the court must neither consider the weight of the evidence nor the credibility of the witnesses in disposing of a directed verdict motion. *Durham v. Warner Elevator Mfg. Co.*, 166 Ohio St. 31 (1956). Thus, ‘if there is substantial competent evidence to support the party against whom the motion is made, upon which evidence reasonable minds might reach different conclusions, the motion must be denied. *Kellerman v. J.S. Durig Co.*, 176 Ohio St. 320 (1964).’” *Strother v. Hutchinson*, 67 Ohio St.2d 282, 284-285 (1981), quoting *Hawkins v. Ivy*, 50 Ohio St.2d 114, 115 (1977).

{¶21} The Contract between the City and AFC for the July 4, 2019 fireworks display required AFC to provide the City with “public liability and property damage insurance” and to “add the sponsor of the project and the property owner of the location

as an additional insured,” in addition to “any property owner in the fallout zone . . . that requests to be named as an additional insured.” The Contract provided, in pertinent part, that AFC “shall be responsible for an inspection of the display area and fall out zone for debris and other items related to the fireworks display” and that its employees or persons used by AFC “in conducting the fireworks display shall have any and all licenses required by local, state or federal ordinances, statutes, rules and regulations.”

{¶22} In Count Six of their complaint, appellants alleged that the School, as the property owner of the location of the fireworks display, was an intended third-party beneficiary to the contract and that AFC breached said contract by its “acts, omissions and/or failures more particularly set forth as follows”:

- a. Failing to properly assess weather and/or wind conditions in advance;
- b. Failing to properly map and/or plan for the trajectory of the subject incendiaries;
- c. Failing to properly to [sic] assess the launch site in relation to perils and/or threats to adjacent property;
- d. Failing to properly inspect the launch site and surroundings following the exhibition including but not limited to failing to await for daylight to assess damage to the South High School/YMCA/Senior Center and/or other property;
- e. Failing to properly monitor workers during the exhibition;
- f. Failing to properly train fireworks displayers and/or register such workers in compliance with the Ohio Revised Code.

{¶23} In their trial brief, appellants maintained, “There is also a factual issue whether [the School] is an intended third-party beneficiary requiring that it be listed as an additional insured pursuant to the AFC/City of Willoughby contract.” At the close of appellants’ case, AFC moved for a directed verdict on “plaintiffs’ claims for damages due

to the alleged failure of [AFC] to add the school district as an additional insured to the policy, as there was no testimony that they failed to do that.” In response, appellants’ counsel admitted that the School is listed as an additional insured on the COI (in very fine print that was missed until right before trial) but argued, in essence, that there is no evidence of such coverage. Appellants’ counsel recounted that the School’s director of operations and security testified there was no other coverage, and the adjuster for Travelers (the School’s insurer) testified he had found no other coverage. Counsel also claimed that T.H.E. (AFC’s insurer) had not responded to their correspondence about any additional-insured coverage for the School. To this point, AFC’s counsel noted that T.H.E. is not a party to this case.

{¶24} The trial court had excluded the COI from Exhibit 11-14 prior to plaintiffs’ case-in-chief. However, when the trial court granted the motion for directed verdict, it relied on Exhibit 6, which includes an unredacted and admitted copy of the COI.² The COI advises that it was issued as a matter of information only; outlines the coverage AFC obtained from T.H.E.; indicates the City is the certificate holder; and names the City and the School as additional insureds. Nevertheless, because the plaintiffs were prevented from questioning witnesses regarding the language of the COI and whether it afforded the contractually required coverage, we cannot say that the copy of the COI included in Exhibit 6 is competent evidence.

{¶25} Thus, we agree with appellants that the trial court erred in granting the motion for directed verdict based on Exhibit 6. However, we also agree with AFC that the

2. There is no explanation anywhere in the record for this discrepancy. Moreover, there was no opportunity for plaintiffs to object to the trial court relying on Exhibit 6, because the trial court summarily granted the motion at trial and did not provide a written explanation for its ruling until it issued the amended judgment entry following this court’s remand from the initial appeal.

error was harmless; i.e., the outcome of this case would have been no different had the trial court overruled the motion for directed verdict.

{¶26} The court instructed the jury as follows, in relevant part:

Plaintiffs also allege that [AFC] agreed to be strictly responsible to [the School] for damages in connection with fireworks display as evidenced by Erik Johannsen's signature on the application for exhibition permit submitted to the City of Willoughby. If you find [AFC] agreed to be strictly responsible for damages suffered by the fireworks display, then you will not have to determine whether or not [AFC] was negligent, but you will still determine whether the fireworks display proximately caused the damage to the roof, and if so, what the cost to repair that damage was.

{¶27} The jury found in favor of appellants and against AFC on the strict liability claim and awarded damages in the amount of \$89,169.00. Because the jury rejected appellants' claim that the fireworks display proximately caused the need for the entire roof to be replaced, the damages award would have been no different whether presented under a strict liability theory or first party insurance coverage. Accordingly, the trial court's error in directing a verdict on appellants' breach of contract claim (predicated on AFC's alleged "failure to name" or "failure to insure" the School) was harmless and does not necessitate a new trial in this case. See, e.g., *Crislip v. TCH Liquidating Co.*, 52 Ohio St.3d 251, 257-258 (1990) (directed verdict on issue of strict liability for failure to warn was harmless error and did not warrant reversal or remand); *Petro v. Cuyahoga Cty. Bd. of Commrs.*, 2003-Ohio-2188, ¶ 33-35 (8th Dist.) (trial court's use of evidence outside record to grant directed verdict was harmless error where plaintiff failed to establish prima facie case of discrimination); *Kuhn v. Kleptz*, 2005-Ohio-4528, ¶ 52 (2d Dist.) (any error in directing a verdict on the proper measure of damages was harmless because the jury did not find in favor of plaintiffs on their liability claims).

{¶28} The first assignment of error is without merit.

Insurance Coverage Evidentiary Rulings

{¶29} In their second assignment of error, appellants maintain the trial court erred in granting AFC's motion in limine to exclude the COI and associated information, made at trial, because the court had set a pretrial deadline for motions in limine to be filed.

{¶30} The standard of review for this issue is abuse of discretion. *Lykins v. Hale*, 2023-Ohio-752, ¶ 17-18 (12th Dist.). "An abuse of discretion means more than an error of law or judgment. Rather, an abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable." (Internal citations omitted.) *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶31} "A trial court's grant or denial of a motion in limine is a tentative, preliminary, or presumptive ruling about an evidentiary issue that is anticipated but has not yet been presented in its full context. A trial court's decision on a motion in limine merely provides a preliminary ruling that must be preserved at trial through an objection, proffer, or other ruling on the record. On the other hand, a motion to exclude . . ., once excluded, may not be revisited in the way that a motion in limine permits." (Internal citations omitted.) *Id.* at ¶ 24.

{¶32} We find the Twelfth District's decision in *Lykins* applicable to appellants' argument in this assignment of error. In that case, the trial court had set a scheduling order providing that motions in limine were to be served no later than 14 days prior to trial. *Id.* at ¶ 20. Approximately 6 days prior to trial, the defendant filed a "motion to exclude" an expert witness report, which the trial court granted. *Id.* at ¶ 21. On appeal, the plaintiff argued that the "motion to exclude" was really a "motion in limine" that fell outside the permissible time period as contained in the scheduling order. *Id.* at ¶ 23. The Twelfth

District found this argument without merit, as the defendant was not seeking a tentative ruling, and held that the trial court had discretion to consider the motion to exclude. *Id.* at ¶ 25.

{¶33} Similarly, here, AFC was not seeking a tentative ruling when it requested that evidence of the amount of insurance coverage be excluded at trial. The trial court therefore had discretion to consider the request to exclude this evidence. “Furthermore, it is well established that trial courts have inherent power to manage their own dockets and the progress of the proceedings before them.” *Id.* “Although scheduling orders are useful in setting the parameters of litigation, the trial court, using its inherent authority, had ample reasons to consider [AFC’s] motion to exclude when it did.” *Id.* Accordingly, we conclude that the trial court did not abuse its discretion in managing its own docket and ruling on AFC’s motion to exclude the evidence that was presented by appellants at the start of trial.

{¶34} The second assignment of error is without merit.

{¶35} In their fifth assignment of error, appellants claim the trial court erred and abused its discretion when it ordered the redaction of Exhibit 1 and excluded evidence of the \$10 million of promised property coverage that AFC was obligated to obtain on behalf of the School. AFC responds that the trial court properly excluded evidence of the limits of property coverage available to AFC under Evid.R. 411, which precludes the admission of evidence of insurance coverage for the purpose of establishing liability. Appellants maintain, however, that they were not offering the evidence to prove liability, as could be prohibited under Evid.R. 411, but to prove their breach of contract claim against AFC (predicated on the alleged “failure to name” or “failure to insure” the School). Based on

our conclusion under the first assignment of error that the directed verdict on this claim is not reversible error, this derivative argument is likewise without merit.

{¶36} The jury found in favor of appellants and against AFC on the strict liability claim and awarded damages in the amount of \$89,169.00, obviously rejecting appellants' claim that the fireworks display proximately caused the need for the entire roof to be replaced. Consequently, the damages award would have been no different whether presented under a strict liability theory or first party insurance coverage, and the existence of insurance policy limits of \$10 million would not have in any way assisted the jury. Moreover, the trial court's exclusion of insurance evidence under Evid.R. 411 to prevent improper use on liability was within its discretion. Because the jury resolved damages based on proximate cause evidence, not on contractual limits, any error was harmless.

{¶37} The fifth assignment of error is without merit.

Witness Testimony Evidentiary Rulings

{¶38} In their third assignment of error, appellants claim the trial court erred and abused its discretion when it excluded the opinion of independent property claims adjuster Adam Searcy on the grounds that repairability and causation were not contained in his report.

{¶39} Searcy's report did not include an independent opinion of causation or replacement/repairability of the roof. Rather, Searcy adopted the manufacturer's recommendation as to replacement and gave his opinion on what that would cost. The trial court permitted Searcy to testify regarding the matters contained in his report and no further. We discern no abuse of discretion with the trial court's ruling, and appellants

presented other evidence on damages and causation, including the manufacturer's testimony.

{¶40} The third assignment of error is without merit.

{¶41} In their fourth assignment of error, appellants claim the trial court erred and abused its discretion in preventing them from cross-examining AFC's expert Robert Fiala regarding the Sedgwick liability report (or Robyn Dabb damage report), which was listed in Fiala's expert report as a document he had reviewed.

{¶42} Sedgwick is the third-party administrator for T.H.E., AFC's insurer; the report was authored by Robyn Babb and was disclosed in discovery. AFC's testifying expert, Robert Fiala, listed the Sedgwick report as a document he had reviewed. At trial, the court excluded the Sedgwick report under Evid.R. 411, characterizing the report as work product and hearsay, and prevented appellants from cross-examining Fiala regarding the report. The court also found the report of little relevance, given the strict liability and proximate cause issues.

{¶43} Evid.R. 411 provides, "Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, if controverted, or bias or prejudice of a witness."

{¶44} We find no reversible error. The Sedgwick liability report evidenced liability insurance and conclusions related thereto. The court acted within its discretion to exclude it under Evid.R. 411 and on privilege/hearsay grounds. Moreover, the jury found strict

liability, rendering the liability aspect of the report of marginal probative value to the central dispute on proximate cause and damages.

{¶45} The fourth assignment of error is without merit.

Damages Award

{¶46} In their sixth assignment of error, appellants claim the jury's \$89,169.00 award for damages, where the roof membrane replacement cost of \$1,032,677.15 was unrefuted, is against the manifest weight of the evidence. AFC responds that the damages award was supported by competent, credible evidence in the form of lay and expert witness testimony and documentation.

{¶47} The jury was instructed that even under strict liability, appellants still had to prove proximate cause and the cost to repair damage caused by the fireworks display. The jury accepted strict liability but awarded a limited sum, reflecting its view of proximate causation and the scope of damages proven. The jury could reasonably credit the expert and lay testimony contesting that the fireworks caused the need for full roof replacement and attributing the roof conditions to installation defects and patching.

{¶48} We will not disturb a damages award supported by competent, credible evidence of proximate cause unless it is "so disproportionate as to shock reasonable sensibilities." *Jeanne v. Hawkes Hosp. of Mt. Carmel*, 74 Ohio App.3d 246, 257 (10th Dist.1991). We do not find that the damages award in this case rises to that level.

{¶49} The sixth assignment of error is without merit.

Conclusion

{¶50} All six assignments of error lack merit. The directed verdict on the breach of contract claim was harmless error in this case. The challenged evidentiary rulings fell

within the trial court's discretion and did not affect appellants' substantial rights. The jury's damages award is supported by competent, credible evidence of proximate cause.

{¶51} The judgment of the Lake County Court of Common Pleas is affirmed.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellants' assignments of error are without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

Costs to be taxed against appellants.

PRESIDING JUDGE MATT LYNCH

JUDGE JOHN J. EKLUND,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.