

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JASMINE PATEL

Plaintiff

v

**HIMALAYAN INTERNATIONAL
INSTITUTE OF YOGA SCIENCE
AND PHILOSOPHY OF THE USA**

Defendant

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: **3:CV-94-1118**
: **(Chief Judge Vanaskie)**
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M E M O R A N D U M

On September 4, 1997, a jury returned an award against the defendant Himalayan International Institute of Yoga Science and Philosophy of the U.S.A. (“Himalayan Institute”) in the amount of \$275,000 in compensatory damages and \$1.6 million in punitive damages for the sexual misconduct of the Himilayan Institute’s former “spiritual leader,” Brijkishor Kumar, popularly known as the “Swami Rama.” Answering special verdict questions, the jury found that Swami Rama (a) had engaged in sexual relations with plaintiff Jasmine Patel, who was 19 years old at the time of the sexual abuse; (b) had abused his position as Patel’s guru to secure her consent to the sexual relations; (c) had breached the standard of care and fiduciary duties inherent in the relationship between him and Patel; (d) had intentionally inflicted emotional distress on Patel; (e) had acted maliciously and with conscious disregard for the welfare of Patel; (f) and was acting within the scope of his agency relationship with the Himalayan Institute when engaging in sexual relations with Patel. (See the Jury’s Response to Special Verdict Questions 1, 3, 8

through 17, 25 and 26. (Dkt. Entry 361). In addition to holding the Himalayan Institute liable for compensatory and punitive damages on a respondeat superior theory, the jury also imposed direct liability on the Institute, finding that (a) it had been negligent in allowing Swami Rama to be a sexual predator for a number of years; (b) the actions and inactions of Himalayan Institute constituted the intentional infliction of emotional distress; and (c) the Himalayan Institute had acted maliciously and with conscious disregard for the welfare of Patel. (Id. Questions 4-7 and 27.)

The Himalayan Institute has moved for a new trial or a reduction in the punitive damage award. (Dkt. Entry 363.) While not contesting the sufficiency of the evidence insofar as the jury's findings on direct liability are concerned, the Himalayan Institute contends that the evidence was insufficient to impose vicarious liability. Because the verdict on punitive damages did not differentiate between the Himalayan Institute's vicarious and direct liability, the Himalayan Institute asserts that the erroneous decision on vicarious liability so infected the punitive damage award as to warrant a new trial. The Himalayan Institute also contends that it is entitled to a new trial based upon a combination of purportedly erroneous trial court rulings concerning such matters as (a) the extent of the evidence that Patel was permitted to introduce with respect to Swami Rama's past sexual exploits; (b) the admissibility of opinion testimony of Dr. Peter Rutter; and (c) purportedly improper and/or inflammatory remarks of plaintiff's counsel made during opening statements and closing arguments. Finally, the Himalayan Institute contends that the punitive damage award is excessive.

Having carefully considered the comprehensive trial record in the context of the parties' respective arguments and the applicable law, I have concluded that the evidence

was indeed sufficient to impose liability on the Himalayan Institute on a respondeat superior theory; the Himalayan Institute was not denied a fair trial in that the contested evidentiary rulings were indeed proper and the statements of Patel's counsel did not make it reasonably probable that the verdict was based on improper considerations; and the award of punitive damages for the egregious conduct of both Swami Rama and the Himalayan Institute was not excessive. Finally, I also find that Patel is entitled to "delay damages" on the compensatory damage award in accordance with Rule 238 of the Pennsylvania Rules of Civil Procedure from August 25, 1995 until September 4, 1997, the date of the verdict.

I. FACTUAL BACKGROUND

As revealed during trial, the Himalayan Institute holds itself out "as a holistic health center" that seeks to combine Eastern and Western traditions. (Tr. 8/12/97 at 81.)¹ The Himalayan Institute is staffed by physicians, psychologists and nurses who share an interest in the application of yoga for health purposes. (Id.) The Himalayan Institute Quarterly for the Spring of 1992 explained the Himalayan Institute's purpose as follows:

Since its establishment in 1971, the Himalayan Institute has been dedicated to helping individuals develop themselves physically, mentally and spiritually, as well as contributing to the transformation of society. All the Institute programs -- educational, therapeutic, research -- emphasize holistic health, yoga and meditation as tools to help achieve those goals. . . . Students from around the world have joined us here for the past fifteen years to attend programs in such diverse areas as biofeedback and stress reduction, hatha yoga, meditation, diet and nutrition, philosophy and metaphysics and practical

¹Herein, the trial transcript will be identified by the designation "Tr." followed by the date of the trial and the page of the transcript. Exhibits introduced by plaintiff will be referred to as "PX-___"; exhibits introduced by the defendant will be referred to as "DX-___."

psychology for better living. We see the realization of our human potentials as a lifelong quest, leading to increased health, creativity and happiness. We welcome all those who are interested in expanding their self-awareness and improving the quality of their life. [PX-225.5; Tr. 8/12/97 at 97.]

The Himalayan Institute was founded in 1971 by Swami Rama, and he served as its spiritual leader, or acharya, from its founding in 1971 through August of 1993. The spring, 1992 Himalayan Institute Quarterly described Swami Rama as follows:

Swami Rama is the founder and spiritual head of The Himalayan Institute centers and training programs around the world. He was born in Uttar Pradesh, in northern India and trained in the tradition of the cave monasteries of the Himalayas. His experiences there are described in his autobiography, Living With the Himalayan Masters. From 1949 to 1952, he held the respected position of Shankaracharya of Karvirpitham, in the south of India. Later, he investigated Western psychology and philosophy in universities in Europe and England, teaching in Japan before coming to the United States in 1969. In 1970 he served as research consultant to the Menninger Foundation Research Project on Voluntary Control of Internal States. His demonstrations there, under laboratory conditions, of his precise control of his own autonomic functioning revolutionized scientists' understanding of the human ability to control the body. He founded the Himalayan Institute to create a bridge between the ancient teachings of the East and modern scientific approaches, and has played a major role in bringing the teachings of yoga to the attention of physicians, psychologists and researchers. [Tr. 8/12/97 at 98-99; PX-225.5.]

As the acharya, Swami Rama was the de facto and de jure head of the Himalayan Institute. (Tr. 8/19/97 at 155-56.) While the Himalayan Institute maintained a Board of Directors and had officers typical of any non-profit corporation, Swami Rama had total authority, choosing the members of the Board of Directors and the Institute's officers.

(Curry Dep. at 67-68.)² He had final, mandatory and recommending powers in all spiritual and administrative matters at the Himalayan Institute. (Tr. 8/19/97 at 158.) (Curry Dep. at 67-68.) The President of the Himalayan Institute, Dr. Rudolph Ballentine, acknowledged that his authority was limited as compared to Swami Rama's. Indeed, Ballentine viewed Swami Rama as a "god." (Tr. 8/20/97 at 116; Tr. 8/21/97 at 24.) He was considered by others at the Himalayan Institute to be an "enlightened being" possessing supernatural powers (Tr. 8/18/97 at 54-55); as an "evolved soul" (Tr. 8/27/97 at 102); and as the "greatest living yogi." (Id.)

Members of the Himalayan Institute Board of Directors believed Swami Rama to be celibate and a completely selfless, spiritual leader, whose actions were taken solely for the benefit of his disciples. (Tr. 8/12/97 at 78-79; Tr. 8/28/97 at 164.) While some of Swami Rama's teachings and tactics were difficult to accept, they were followed in the faith that Swami Rama was acting for the benefit of his disciples. (Tr. 8/12/97 at 127; Tr. 8/28/97 at 164.) Dr. Ballentine expressed the view that it was inconceivable that Swami Rama would take any action toward his students or disciples that would be harmful to them. (Tr. 8/20/97 at 180; PX-40.1.)

Jasmine Patel was introduced to the Swami Rama through her parents. (Tr. 8/25/97 at 30-32.) Patel's parents, who had emigrated to the United States from India, viewed Swami Rama as the family guru. (Id. at 32.) The family spent a considerable amount of time at the Honesdale facility, often vacationing there during the summer. (Id.

²The videotape deposition of Rosalie Curry was played to the jury on August 15, 1997. Her husband had been a member of the Institute's Board from 1980 to 1982. He resigned when he learned that Swami Rama had a sexual relationship with his wife before they were married.

at 32-35.) When Patel was approximately 13 or 14 years old, she was initiated by the Swami Rama into his spiritual tradition. At that time, she received her “mantra” from Swami Rama, signifying that he was her guru. (Id. at 36-37.) Swami Rama, to whom Patel often referred as “baba,” meaning grandfather, repeatedly instructed Patel that it was a sin to disobey him. (Id. at 38-39.)

During the summer of 1989, Patel enrolled in the Himalayan Institute’s “self-transformation program.” During this summer, Swami Rama sometimes hugged her, patted her rear end, and put his hand up her shirt. (Id. at 39-40.) When she reacted by stating that she was scared, Swami Rama assured her that he would never hurt her. (Id.)

In the summer of 1991, prior to the beginning of her senior year in high school, Patel enrolled again in the self-transformation program. (Id. at 41.) During her participation in the program, she spent a considerable amount of time with Swami Rama. (Id. at 44.) This made her feel both privileged and apprehensive as she did not know what was expected of her. (Id.) He often spoke to her of love and trust. On one occasion, he forceably kissed her. (Id. at 45-49.) He did not become more aggressive after that incident, but did tell her that she should not disclose the incident to anyone else, that she should never doubt her guru, and that it was a sin to do so. (Id. at 50-52.)

Patel again enrolled in the self-transformation program in the summer of 1992, after she had graduated from high school. (Id. at 54-56.) While she had quite a bit of contact with Swami Rama during the summer of 1992, he was not sexually aggressive towards her. (Id. at 58-59.)

At the completion of the self-transformation program in the summer of 1992, Patel remained in residence at the Honesdale facility, staying there until July 31, 1993. Swami

Rama had returned to India in the late summer of 1992 and did not return until the spring of 1993.³ When Swami Rama returned to the Himalayan Institute in the spring of 1993, he had more contact with Patel. (Id. at 61-62.) During long walks, he continuously talked about his love for her and asked, “when will you give me love?” (Id. at 63-64.) When she said that she was not comfortable with what he was intimating, he responded by questioning, “why don’t you trust me?” (Id. at 65.) Swami Rama reacted to her hesitancy by becoming cold and withdrawn, making Patel feel like she had lost her guru. (Id. at 70.) Ultimately, Swami Rama succeeded in having sexual relations with Patel. (Id. at 70-75.)⁴

Shortly after the first incident, Patel informed Deborah Willoughby, a Himalayan Institute resident who was editor of the Institute’s magazine. (Id. at 75-77.) Willoughby, who is now President of the Institute, informed Patel that she should either leave the Institute or accede to Swami Rama’s demands because it was probably for Patel’s own good. (Id. at 77-78.)

Patel opted for the latter course. She thought she was being tested by Swami Rama and had to persevere in her trust of him because he knew what was best for her. (Id. at 78-80.) She eventually told Swami Rama of her conversation with Willoughby, and Swami Rama had Patel write a letter to Willoughby disavowing her earlier statement. (Id. at 80-84; PX-56.)

Swami Rama continued to engage in sex acts with Patel until July 29, 1993. (Id. at

³Swami Rama typically was annually in India from around September until April (Id. at 60.)

⁴Patel was a virgin. (Id. at 73.) Swami Rama’s initial attempts to penetrate her were unsuccessful, but eventually he achieved penetration and had sex with her on a number of occasions.

102.) When she left the Himalayan Institute on July 31, 1993, Patel felt liberated, having passed Swami Rama's tests, and now ready to begin her life. (Id.) A few weeks later, however, she came to the realization that Swami Rama's actions were terribly wrong. (Id. at 104-05.) In an essay for school titled, "The Sacredless Place," Patel wrote of Swami Rama's behavior and sent copies of the essay to her friends at the Himalayan Institute. (PX-59; Tr. 8/25/97 at 107-08.)

Patel's essay was not the first notification to the officers and members of the Board of Directors of the Himalayan Institute of sexual improprieties by Swami Rama. Prior to becoming president of the Himalayan Institute in 1981, Dr. Ballentine had heard allegations of sexual abuse by Swami Rama. (Tr. 8/19/97 at 168.) In 1981, Robin Whitney reported abuse by Swami Rama to Brandt Dayton, who was a member of the Institute Board of Directors. (Tr. 8/19/97 at 4-19.) A meeting involving Dayton, Dr. Ballentine, Dr. Clarke (Chairman of the Institute Board), and Swami Rama was conducted, during which Whitney was classified as "goofy" and "hysterical." (Curry Dep. at 62-63.)

Another member of the Institute Board, Dr. Edward Funk, broached the subject of Swami Rama's sexual proclivities with Institute residents. (Tr. 8/27/97 at 132-35.) Funk reduced his concerns to a letter that raised "serious questions of an ethical nature" pertaining to the Swami Rama and female residents of the Himalayan Institute. (PX-7; Tr. 8/21/97 at 127.) Funk resigned as a Board member as a result of the Institute's inaction on his allegations. (Tr. 8/27/97 at 135.)

In 1982, Alan Hymes, a doctor who had been associated with the Institute in the late 1970's, complained to Dr. Ballentine of a sexual relationship between Swami Rama and Hymes' daughter, Cary. (Tr. 8/18/97 at 114-18.) Dr. Ballentine stated that the

daughter was emotionally disturbed and delusional, and that her allegations were figments of her imagination. (Id. at 117-18.) Hymes resigned from the Board. (Id. at 116.)

Sheila Culkin informed an Institute Board member of a sexual encounter with Swami Rama in the 1982-1983 time frame. (Tr. 8/18/97 at 160-63.) While the Board discussed Culkin's allegations, they did not give them much credence. (Tr. 8/14/97 at 31-32.) Swami Rama informed Board members that Culkin's allegations were part of a conspiracy against him and the Institute. (Id. at 30-31; Tr. 8/28/97 at 215-16.)

In May of 1989, Robert Hughes, who had been associated with the Institute, wrote to Ballentine, repeating stories of sexual abuse that he had heard. (Tr. 8/19/97 at 42-59; PX-9.) His letter concluded:

I would appreciate hearing from you as soon as possible if there are any other possible explanations for these dreadful stories about sexual abuse, seduction, exploitation, victimization, manipulation and rape, and equally disturbing, a systematic cover-up, which would be unethical, on the part of any professional psychologist, psychiatrist or counselor. [Tr. 8/19/97 at 61; PX-9.]

In reaction to Hughes' letter, Dr. Ballentine informed others at the Himalayan Institute that Hughes was making false accusations because he was gay and upset that Swami Rama would not marry him to another man. (Tr. 8/27/97 at 185-87.)

In December of 1989, Dina Capobianco, a disciple of Swami Rama, informed Dr. Ballentine of an intimate encounter with Swami Rama during the summer of 1989. (Tr. 8/18/97 at 66-70.) Dr. Ballentine did not believe her. (Tr. 8/20/97 at 109-13.)

In 1990, Dr. Leslie Smith McDaniel, who had been affiliated with the Institute from 1979 until 1981 before becoming a psychiatrist, wrote to various members of the Institute's Board. (PX-11.) In her letter, Dr. McDaniel informed the Board members that

Swami Rama was engaging in a “form of psychological abuse and sexual abuse . . . , which is clearly manipulative and exploitive in nature.” (Tr. 8/15/97 at 74-76.) She related that her personal sexual relationship with Swami Rama lasted for almost three years, but was “quite coercive.” (Id. at 76.) She explained that a “student of such a teacher is not in a position to freely refuse or consent to these requests; i.e., there was a significant coercive factor present.” (Id. at 76-77.) She further asserted that “Swami Rama has clearly, over the past many years, been exploiting the trust, dependency and spiritual inclination of his female students, for his own gratification,” and not for the benefit of the women. (Id.) She offered to put the Institute in contact with other abused women and accused the Institute of a complete refusal to investigate credible charges of abuse. (Id. at 78-90.) No one from the Institute responded to Dr. McDaniel’s letter. (Tr. 8/14/97 at 91-93.)

Also in early 1990, Dr. Ballentine received a report from Roseanne Emanuele of a sexual relationship with Swami Rama. (Tr. 8/20/97 at 126-27.) She had been in residence at the Institute 1980’s. Emanuele made clear to Dr. Ballentine that the relationship was not voluntary. (Tr. 8/25/97 at 21-24.) Dr. Ballentine told Emanuele that sex with the guru greatly advanced the student. (Id. at 25.)

In April of 1990, Julia Robling Griest wrote to Dr. Ballentine, informing him that Swami Rama had abused her from 1979 through 1983 while she was a resident of the Institute. (PX-12.) Griest’s letter stated:

I know that others had spoken to you about this matter, even before I was abused. If only you had responded to the first pleas, then, I wouldn’t have had to undergone this devastating experience. But you enabled this to happen and, now, because you have continued to ignore the situation, women

are still being hurt, even today. [Tr. 8/20/97 at 8.]

In the latter part of 1990, an article in the Yoga Journal titled “The Case Against Swami Rama of the Himalayas,” reported allegations of Swami Rama’s exploitation of women. (PX-27.) This article, while using pseudonyms, detailed the accounts of several women who alleged to have been sexually exploited by Swami Rama. The Institute leadership reacted to this article by describing it as “deplorable and misguided,” and indicating that a libel action had been considered. (PX-34; Tr. 8/14/97 at 43-46.)

In 1992, Dr. Ballentine learned that his former secretary, Rosalie Curry, and his ex-wife, Penel, had both had sexual relations with Swami Rama.⁵ (Curry Dep. at 73-76.) Dr. Ballentine was inclined to believe these reports (8/20/97 at 191-94), but was not convinced that Swami Rama was acting for selfish purposes. (Id. at 80.) According to Dr. Ballentine, he had “difficulty in seeing the experiences that the women have talked about with Swami Rama as abusive . . . because that’s not what I saw. I saw these women mature and grow and blossom.” (Tr. 8/21/97 at 101.)

In response to Patel’s essay, some members of the Board of Directors called for an investigation of the matter. (Tr. 8/14/97 at 47-55.) In December of 1993, Swami Rama telefaxed from India a letter in which he indicated that he was never returning to the United States. (PX-143.) Pandit Rajmani Tigunait, Ph.D., replaced Swami Rama as the Institute’s acharya. (Tr. 8/27/97 at 156.) The Himalayan Institute did not conduct an investigation into Patel’s charges. (Tr. 8/14/97 at 57-60.) Swami Rama reportedly passed away in India in November of 1996. (Tr. 8/28/97 at 56-60.)

⁵Dr. Ballentine’s ex-wife was sexually intimate with Swami Rama before he married her. (Tr. 8/20/97 at 191.)

II. PROCEDURAL HISTORY

Patel commenced this lawsuit on July 15, 1994. On that same date, Michaela Heinze, a former Institute resident, also brought an action alleging sexual abuse by Swami Rama. Both actions named as defendants the Himalayan Institute, Swami Rama, and Drs. Ballentine, Clarke and Tigunait. By Order dated October 28, 1994, the two actions were consolidated. (Dkt. Entry 41.)

Following oral argument, defendants' motions to dismiss were denied by Order dated December 29, 1994. (Dkt. Entry 51.) There followed an extensive period of discovery. Throughout the course of the pretrial proceedings, plaintiffs were frustrated by their inability to depose Swami Rama. On August 8, 1995, defense counsel moved to withdraw as counsel for Swami Rama, citing his lack of cooperation. (Dkt. Entry 98.) On October 13, 1995, following oral argument, leave to withdraw as counsel for Swami Rama was granted. (Dkt. Entry 112.)

Following completion of discovery, the represented defendants moved for summary judgment. On September 30, 1996, the motions were granted in part and denied in part. (Dkt. Entry 201.) Specifically, medical malpractice claims asserted against Drs. Ballantine and Clarke and a sexual harassment claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.*, asserted against the Himalayan Institute were dismissed. The case proceeded on liability theories of negligence, intentional infliction of emotional distress, breach of fiduciary duties arising out of the counselor or guru/disciple relationship between Swami Rama and Patel, and violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

A summary jury trial and a referral to a mediator in March of 1997 in order to

effectuate an amicable resolution of the controversy were unsuccessful. By Order dated July 24, 1997, the voluntary dismissal of the action as against Drs. Ballentine, Clarke and Tignait was granted. (Dkt. Entry 285.) By Order dated July 28, 1997, various motions in limine were decided. (Dkt. Entry 289.) In particular, the motion to preclude references to sexual conduct of Swami Rama prior to the publication of the Yoga Journal article in late 1990 was denied, but plaintiffs were precluded from introducing evidence regarding Swami Rama's alleged sexual misconduct occurring prior to the establishment of the Honesdale facility. Moreover, evidence of notice of Swami Rama's alleged sexual misconduct received by the Himalayan Institute after August of 1993 was precluded. A motion in limine to bar introduction of the Yoga Journal article also was denied, as was a motion to preclude the admissibility of documents and letters giving the Himalayan Institute notice of sexual improprieties.⁶

By Order dated August 7, 1997, plaintiff's motion for voluntary dismissal of the action as against Swami Rama was granted. (Dkt. Entry 309.) Prior to trial, plaintiff Michaela Heinze accepted an offer of judgment in the amount of \$125,000. (Dkt. Entries 420-425.) Jasmine Patel rejected an offer of judgment in the amount of \$350,000, and her claims proceeded to a jury trial against only the Himalayan Institute.

The trial was conducted from August 12, 1997 through September 4, 1997. As noted above, the jury found in her favor on all claims, with the exception of the Fair

⁶The Order was later amended to provide that the plaintiffs were precluded from introducing evidence pertaining to Swami Rama's alleged sexual misconduct prior to the move of the Himalayan Institute headquarters to Honesdale in 1978, unless notice of such alleged misconduct was provided to either Drs. Ballentine or Clarke after they became President and Chairman of the Institute. (Dkt. Entry 299.)

Housing Act claim, and awarded her \$275,000 in compensatory damages and \$1.6 million in punitive damages.

On September 8, 1997, the Himalayan Institute moved for a new trial and/or remittitur. (Dkt. Entry 363.) Patel, on September 10, 1997, moved for “delay damages” under Rule 238 of the Pennsylvania Rules of Civil Procedure, asserting that the offer of judgment did not affect her right to recover such damages on the compensatory part of the jury’s award. (Dkt. Entry 396.) Following completion of the trial transcript and after several extensions of time were granted, briefing on the post-trial motions was completed in November of 1998.

III. DISCUSSION

A. Sufficiency of the Evidence of Vicarious Liability

The Himalayan Institute contends that “[w]hile the evidence could support a finding that the leadership of the Himalayan Institute was aware of Swami Rama’s activities but looked the other way, Patel’s evidence fell far short of proving how Swami Rama intended to further the Himalayan Institute’s interests, activities or business by engaging in sexual relations with her.” (Reply Brief in Support of Post-Trial Motions (Dkt. Entry 456) at 5-6.) In other words, the Himalayan Institute challenges the sufficiency of the evidence to support the jury’s finding that Swami Rama was acting within the scope of his agency relationship with the Himalayan Institute when engaging in or attempting to engage in sexual relations with Patel.

“Where the movant seeks a new trial on the basis that the verdict is against the weight of the evidence, the court’s power to overturn the jury’s award is severely

circumscribed.” Henry v. Hess Oil Virgin Islands Corp., 163 F.R.D. 237, 242 (D.V.I. 1995).

Generally speaking, a “new trial must be necessary to avoid a miscarriage of justice.”

Shanno v. Magee Industrial Enterprises, Inc., 856 F.2d 562, 567 (3d Cir. 1988). In order

to overturn a jury award as unsupported by the evidence the verdict must be “so

unreasonable as to offend the conscience of the court.” Murray v. Morse, 610 F.2d 149,

152 (3d Cir. 1979). Of course, there must be more than a scintilla of evidence supporting

the verdict; the jury’s decision “must be plausible in light of the full evidentiary record.”

Henry, 163 F.R.D. at 243. The evidence must be assessed in the context of the

controlling legal precepts.

The pertinent legal principles on vicarious liability were set forth in the Jury

Instructions as follows:

[Patel] claims that Swami Rama was acting as the agent of the Himalayan Institute at the time he engaged in sexual relations with her, which is denied by the Himalayan Institute. If you find that Swami Rama was the agent of the Himalayan Institute and was acting with the intent to further the Himalayan Institute’s interests, activities, or business in connection with his relations with the plaintiff, then the Himalayan Institute would be liable if you find that Swami Rama breached the standard of care of the counselor, breached a fiduciary duty or engaged in conduct that constitutes intentional infliction of emotional distress.

An agent is acting within the scope of his agency if such act is intended to be in furtherance of the principal’s interests, activities, or business, or is designed to accomplish the purpose of the agency. It is not necessary that the act or omission have been specifically authorized, as long as it could reasonably be found to have been contemplated as part of his agency. An agent is not within the scope of his agency when he departs or substantially deviates from the business or service of his principal, pursuing

some personal activity on his own account and not reasonably embraced within his agency or not directed towards advancing his principal's interests. In this case, the Himalayan Institute alleges that if Swami Rama engaged in sexual relations with the plaintiff, then Swami Rama was not acting in furtherance of its interests, activities or business. In determining the Himalayan Institute's liability based on the acts of Swami Rama you may consider whether sexual relations between Swami Rama and the plaintiff were in any way expected or anticipated based upon any prior notice the Himalayan Institute may have had regarding Swami Rama's alleged propensity to engage in sexual relations with Himalayan Institute residents. You must consider all of the evidence in this regard and determine whether Swami Rama's sexual relations with the plaintiff were in furtherance of the Himalayan Institute's interests, activities or business, so that such acts might be said to be impliedly within Swami Rama's authority, or were done solely for Swami Rama's personal benefit and had no connection with his duties with the Himalayan Institute and were, therefore, beyond the scope of his agency. [Tr. 9/3/97 at 158-60.]

In this case, there was ample evidence to find vicarious liability in accordance with the instructions on the law. Swami Rama was ceded "final, mandatory and recommending powers in all spiritual and administrative matters." (Tr. 8/19/97 at 158.) Swami Rama claimed that the Institute was a "vehicle" for his own work. (Tr. 8/14/97 at 25.) The Himalayan Institute Board regarded Swami Rama as the Institute. (Id.) No other person within the Institute had authority greater than Swami Rama, including the Board of Directors. (Tr. 8/18/97 at 129; Curry Dep. at 67-68; Tr. 8/27/97 at 167.) As asserted by Patel at page 7 of her Brief in Opposition to the Motion for New Trial, "[t]he testimony ... quite directly demonstrated that the Himalayan Institute permitted Swami Rama to pursue his work for the benefit of the corporation, including his counseling and teaching, in

whatever manner he chose and with absolute authority to determine the scope of his agency and conduct.” In Allen v. France Packing Co., 170 Pa. Super. 632, 635, 90 A.2d 289, 291(1952), the court recognized that a corporate entity cannot disclaim vicarious liability when it delegates unrestrained authority to a corporate agent. In this case, Swami Rama made sex part of the Institute’s “holistic health services” to Patel. Having given Swami Rama unfettered authority to counsel Institute residents as Swami Rama deemed appropriate, the Institute cannot now be heard to disclaim liability for Swami Rama’s unorthodox and morally corrupt practices.

In this regard, the officers and directors of the Himalayan Institute perceived that all actions taken by Swami Rama were selfless and that even actions that seemed wrong or motivated by personal gratification were intended to benefit his disciples. One former Board member, Dale Colton, testified that while Swami Rama’s tactics may have been difficult to understand, “it was taken in the faith that it was for our own good, so we were to accept his teachings.” (Tr. 8/12/97 at 127). She also noted that it was expected that Swami Rama would “test” his disciples, and that one of the “tests” was to take actions that seemed wrong. (Tr. 8/14/97 at 17-18.) Swami Rama had told some of his victims that sexual relations with him would be beneficial. (Tr. 8/18/97 at 63; Curry Dep. 39-40.) Dr. Ballentine, after hearing of the allegations of one victim, speculated that Swami Rama was trying to help the women, explaining in his diary “I don’t understand too much about [Swami Rama]; but I know he is unvaryingly selfless.” (Tr. 8/20/97 at 80.) Ballentine further stated that it was inconceivable that Swami Rama would do anything to harm one of his disciples and that he could not see how sexual relations with Swami Rama were “abusive” because “I saw these women mature and grow and blossom.” (Id.; Tr. 8/21/97

at 101.) Swami Rama had indicated to Patel, herself, that sexual relations with him were part of his therapeutic regimen and had convinced her that he was simply “testing” her for her own good. (Tr. 8/25/97 at 80.) Dr. Clarke’s wife and Deborah Willoughby both suggested to Patel that Swami Rama did things for her own good, even if it made her uncomfortable. (Id. at 53, 77.)

Vicarious liability extends even to intentional or criminal conduct of the agent. See United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174, 204 (3rd Cir. 1970), cert. denied, 401 U.S. 948 (1971) (agent who engaged in price-fixing conspiracy was motivated at least in part by a desire to serve his principal and was thus acting in the course of his employment); Barry v. Manor Care, Inc., No. Civ. A. 97-5883, 1999 WL 257663, at *3 (E.D. Pa., April 29, 1999) (whether nursing home employee was acting within the scope of his employment when he assaulted a patient while changing her diaper was a jury question). In this case, there was considerable evidence on which to base a rational conclusion that Swami Rama intended to further the interests of the Himalayan Institute by engaging in sexual relations with those seeking treatment there.

Finally, the jury had substantial evidence on which to base a conclusion that sexual relations between Swami Rama and Patel were to be expected or anticipated based upon prior notice to the Himalayan Institute of Swami Rama’s propensity to engage in sexual relations with Himalayan Institute residents. As noted above, the Himalayan Institute concedes that there was sufficient evidence for a conclusion that the Institute “was aware of Swami Rama’s activities but looked the other way. . . .” Contrary to the Himalayan Institute’s argument, however, such evidence would also permit an inference that the Himalayan Institute condoned sexual relations between Swami Rama and his disciples as

part of the services he provided. Indeed, the Institute continued to provide Swami Rama with the opportunity to engage in improper sexual relations after receiving multiple reports of such misconduct.

It has been recognized that “where tortious conduct [of a sexual nature] arises out of and is reasonably incidental to the employees’ legitimate work activities, the ‘motivation to serve’ test [of vicarious liability] will have been satisfied.” Doe v. Samaritan Counseling Center, 791 P.2d 344, 348 (Alaska 1990). Accord, Simmons v. United States, 805 F.2d 1363, 1371 (9th Cir. 1986); Marston v. Minneapolis Clinic of Psychiatry and Neurology, Ltd., 329 N.W.2d 306, 311 (Minn. 1982). In this case, the Himalayan Institute’s notice of Swami Rama’s prior transgressions coupled with the continued untrammelled authority delegated to Swami Rama are sufficient to support a finding of vicarious liability.⁷

In summary, the evidence was indeed sufficient to support a finding of vicarious liability in accordance with the jury instructions. Accordingly, the Himalayan Institute is not entitled to a new trial on the ground that the vicarious liability findings somehow improperly

⁷Sanchez v. Montgomery, 165 Pa. Cmwlth. 381, 645 A.2d 383 (1994), upon which the Himalayan Institute relies, is plainly distinguishable. In Sanchez, the court held that a community action agency could not be held responsible for a day care workers’ molestation of a child because “[t]here can be no doubt that [the] actions were conducted for personal reasons only” 645 A. 2d at 391. In this case, by way of contrast, sexual abuse occurred on the property of the Himalayan Institute and there was evidence that Swami Rama was motivated, at least in part, to serve the interests of the Himalayan Institute, i.e., he expressed that sex with him was good for his disciples.

Hutchinson v. Luddy, 453 Pa.Super. 420, 683 A.2d 1254 (1996), the other case upon which the Institute relies, was reversed on November 24, 1999. See, Hutchinson v. Luddy, 1999 WL 1062862 (Pa. Nov. 24, 1999). In Hutchinson, the Pennsylvania Supreme Court ruled that a Bishop and Diocese could be held liable for their failure to take action with respect to a priest who they knew to have a propensity for pedophilic behavior.

inflated the punitive damage award.⁸

B. Claims of Trial Court Error that Purportedly Denied the Himalayan Institute a Fair Trial

The Himalayan Institute contends that an aggregation of erroneous evidentiary rulings and improper remarks by counsel in opening statements and closing arguments deprived it of a fair trial. Specifically, the Himalayan Institute asserts that the court erred by admitting testimony and letters of other women who claimed to have had sexual relations with Swami Rama and by admitting portions of the Yoga Journal article beyond that which was necessary to establish notice of other incidents and Swami Rama's modus operandi. The Himalayan Institute further contends that the testimony of Dr. Peter Rutter, who opined concerning the improprieties of Swami Rama's sexual relations with Patel, should have been excluded under the Daubert rule. Finally, the Himalayan Institute insists that remarks made by counsel during opening statements that purportedly alluded to unsuccessful settlement efforts prior to the inception of litigation, and alleged inflammatory arguments made during closing argument on the subject of punitive damages, warrant a new trial. Each of these contentions will be addressed seriatim.

1. Testimony and Evidence from Other Women who Claimed to Have Been Abused by Swami Rama

The Himalayan Institute contends that the court erred in allowing Dr. Leslie Smith McDaniel, a psychiatrist, to read into evidence her entire letter of January 24, 1990 to

⁸Patel argues that the Himalayan Institute waived its claim that the vicarious liability finding improperly influenced the punitive damage award, pointing out that the Himalayan Institute did not object to the verdict form that required the jury to return a single award of punitive damages, rather than a separate award for vicarious liability and a separate award for direct liability. In light of the finding that the evidence was indeed sufficient to support the vicarious liability decision, there is no need to address the waiver argument.

various members of the Himalayan Institute Board. (PX-11.) In this letter, Dr. McDaniel not only related the details of Swami Rama's sexual predation towards her, but also referred to accounts she had heard involving other women, as well as explained how such relationships could not be regarded as "consensual" and had the potential to cause serious emotional problems. This testimony was admitted in light of the Himalayan Institute's denial that Swami Rama had engaged in sexual relations with Patel and to establish the Himalayan Institute's direct liability in light of its assertion that it had been under no duty to investigate allegations of abuse and protect residents against such abuse. The jury was specifically cautioned that the McDaniel letter was admitted for a limited purpose only -- "to show notice to the Institute of allegation or allegations of misconduct on the part of Swami Rama." (Tr. 8/15/97 at 73.) The jury was further instructed that it was not to consider the letter for the truth of the matters asserted in it, nor was the jury to consider the letter for purposes of assessing the validity or correctness of opinions expressed in it. (Id.) The jury was told that it should consider the letter only for the purpose of understanding what information was available to the Institute's officers and directors. (Id.)

Clearly, the jury was properly instructed on the limited purposes for which the McDaniel testimony and letter were admitted. Equally clearly, the testimony and letter were relevant: details of the sexual encounter were admissible to show Swami Rama's pattern of manipulation, making it more likely than not that he had indeed engaged in sexual relations with Patel; the detailed information and the opinions of a psychiatrist articulated in the letter were relevant to refute the Himalayan Institute's assertion that it had not been presented with sufficient information to trigger an investigation of Swami

Rama and curb his conduct.

The Himalayan Institute contends that the court erred in allowing Dr. Sheila Culkin, a psychologist, to testify about her sexual relations with Swami Rama because she could not identify any officer or Board member of the Himalayan Institute who she had told about her sexual relations with Swami Rama. Notice of her claim of abuse, however, was conceded by several Board members. For example, Dale Colton testified that the Board had discussed allegations pertaining to Culkin in the early 1980's. (Tr. 8/14/97 at 31-32.) Julia Robling Griest talked to Dr. Tigunait about Culkin's allegations. (Tr. 8/20/97 at 32.) Dr. Ballentine recalled being aware of Culkin's claims of immoral conduct by Swami Rama, but did not take them seriously. (Tr. 8/19/97 at 205-06; Tr. 8/20/97 at 57, 65-66.) Culkin provided testimony with respect to Swami Rama's modus operandi and also testified how Swami Rama could convince women to take otherwise irrational action, like wearing a dog collar and leash or picking poison ivy with their bare hands. This testimony was relevant to show how Swami Rama overcame the free will of those he manipulated. The relevance of this information was not substantially outweighed by its prejudicial effects.

The Himalayan Institute also contends that the court erred in allowing Julia Robling Griest to testify about her experiences with Swami Rama and the letter she wrote to the Himalayan Institute. (PX-12.) Once again, the testimony and exhibit were admitted under limiting instructions so that the jury knew that it could consider the evidence only for the limited purpose of understanding the notice to the Himalayan Institute of allegations of sexual abuse. No error was committed in the admission of such evidence.

Contrary to the Himalayan Institute's assertions, evidence on notice and modus

operandi should not have been limited to testimony as to “how, when, and to whom notice was given at the Himalayan Institute and how and in what circumstances Swami Rama propositioned them to have sexual relations with him.” (Brief in Support of Motion for New Trial (Dkt. Entry 448) at 18.) Patel was plainly entitled to present not only evidence of the fact of notice, but also the contents of the notice. As Patel asserts, “[c]ommon sense particularly in light of the testimony of the officers of the Himalayan Institute that they had no reason to engage in any investigation, demonstrates that the detailed content of the notice that was provided to them was not only highly relevant, but absolutely necessary to establish the lack of credibility of the testimony of the officers of the Himalayan Institute.” (Brief in Opposition to Motion for New Trial (Dkt. Entry 452) at 18). Accordingly, the Himalayan Institute is not entitled to a new trial based upon the admission of evidence pertaining to Swami Rama’s sexual proclivities.

2. The Yoga Journal Article

The jury was presented with a redacted version of the Yoga Journal article, “The Case Against Swami Rama of the Himalayas.” (Px-27.1) The Himalayan Institute contends that the article should not have been admitted in even its redacted state, contending that it constituted inadmissible hearsay.

As with respect to the testimony of other alleged victims of Swami Rama who notified the Himalayan Institute of improprieties, the Yoga Journal article was admitted for purpose of showing notice to the Himalayan Institute. A proper limiting instruction was given at the time of its introduction. (Tr. 8/19/97 at 119-20.) Contrary to the Himalayan Institute’s assertion, Patel did not have to wait until the Himalayan Institute presented evidence contesting the credibility of the article. The Himalayan Institute had already

disavowed the contents of the article in responding to articles that had appeared in a local newspaper. (Tr. 8/14/97 at 43-46; PX-34.) Patel was plainly entitled in her case-in-chief on the direct liability of the Himalayan Institute to show what it knew and what it did about it, and this included the Yoga Journal article and the Himalayan Institute's attempts to "sweep it under the rug." Admission of the Yoga Journal article does not entitle the Himalayan Institute to a new trial.

3. The Admissibility of Dr. Peter Rutter's Testimony

Incorporating by reference arguments asserted in a pretrial Daubert motion, the Himalayan Institute argues that the Court erred in allowing the testimony of Dr. Peter Rutter, a board-certified psychiatrist. Dr. Rutter explained why Patel's consent to sexual relations with Swami Rama was the product of his abuse of the relationship of trust and confidence reposed in him as the spiritual leader of the Himalayan Institute and Patel's guru. He also opined that Swami Rama had breached the standard of care applicable to a holistic health care provider by engaging in sexual relations with Patel. (Tr. 8/26/97 at 88-102.) Finally, Dr. Rutter testified as to the standard of care applicable to the Himalayan Institute with respect to a duty to investigate allegations of Swami Rama's abuse of other women. (Id. at 103-08.)

Rule 702 of the Federal Rules of Evidence provides:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1994), the Court, focusing

upon the admissibility of scientific expert testimony, held that it is the trial court's function to determine that such testimony is both reliable and relevant. The Court identified certain factors that bear on the question of reliability in the context of scientific testimony.⁹

Seizing on the factors suggested by the Supreme Court and the Third Circuit for assessing the reliability of proposed testimony from a scientist, defendants argued pre-trial that Dr. Rutter should not be allowed to testify at all. As set forth in Dr. Ballentine's Brief in Support of his Motion in Limine (Dkt. Entry 222)¹⁰:

Rutter's methodology, if there is one at all, consists of a suggestive 'untestable' theory of human behavior which has not been subjected to any standards other than those of his own making; the potential rate of error for his theory is wholly unexplored; his theories have not been subjected to peer review or publication in a scientific as opposed to litigation or popular opinion forum; and his theory of transference, as applied to the facts of this case, is not generally accepted in the scientific or

⁹Our Court of Appeals has suggested that in making a preliminary determination pertaining to the reliability of scientific testimony, the district judge should consider the following factors:

"(1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put."

United States v. Velasquez, 64 F.3d 844, 849 n.8 (3d Cir. 1995).

¹⁰The Himalayan Institute adopted by reference Dr. Ballentine's objections to Dr. Rutter's testimony.

legal communities and, at best, is useful only for clinical purposes. Simply put, Rutter's opinions are not based on valid scientific principles or methodology, and thus are inadmissible in court. [Id. at 12-13.]

The unsound premise of the Himalayan Institute's argument is that the factors for assessing the reliability of scientific testimony necessarily apply in the social science context. In Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 143 L.Ed. 2d 238, 246 (1999), the Court held that while "Daubert's general holding -- setting forth the trial judge's general 'gatekeeping' obligation -- applies not only to testimony based on 'scientific' knowledge, but also to testimony based on 'technical' or 'other specialized' knowledge," the list of specific factors for assessing liability set forth in Daubert "neither necessarily nor exclusively applies to all experts or in every case." "Rather," wrote Justice Breyer, "the law grants a district court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determination." Id. As recently explained in Skidmore v. Precision Printing and Packing, Inc., 188 F.3d 606, 618 (5th Cir. 1999):

Whether Daubert's suggested indicia of reliability apply to any given testimony depends on the nature of the issue at hand, the witness's particular expertise, and the subject of the testimony. It is a fact-specific inquiry. The district court's responsibility 'is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'"

A pertinent inquiry on the reliability of the proffered testimony and a threshold requirement of Rule 702 of the Federal Rules of Evidence is that the proposed witness be an expert. As noted above, Dr. Rutter is a board-certified psychiatrist trained as a psychoanalyst in the "Jungian School" of psychoanalysis. (Tr. 8/26/97 at 69-70.) He has

been on the faculty of the University of California Medical School. (Id. at 70.) He has studied the subject of sexual abuse in the context of relationships in which trust is reposed in a health care professional or other professional counselor. (Id. at 71-73.) He is the author of a book published in 1989 titled, "Sex in the Forbidden Zone," which concerns use of positions of trust for sexually exploitive purposes. (Id. at 71-72.) In connection with his work, he has become familiar with various published standards pertaining to various relationships in which a female reposes a great deal of trust in a male professional, whether that be a psychiatrist, psychotherapist, doctor, clergyman, etc. (Id. at 73-74.) He has lectured on the subject across the country and has testified in court proceedings on a number of occasions. (Id. at 73-77.)

Clearly, Dr. Rutter possessed specialized knowledge on the subject of sexual relations between a therapist and a client or a patient and a doctor. This specialized knowledge is based upon years of study of the subject, clinical experience, and interviews of both victims and abusers. He thus had ample qualifications to testify with respect to the issues pertaining to Patel's consent to sexual relations with Patel, the impropriety of Swami Rama's actions, and the negligence of the Himalayan Institute in its reaction to complaints of abuse by Swami Rama.

Dr. Rutter's testimony also indicated that he employed "in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." Kumho, 143 L.Ed. 2d at 252. He testified that there was "universal agreement" that sexualization in a therapeutic environment, such as the holistic healthcare environment offered by the Himalayan Institute, was improper. (Tr. 8/26/97 at 91.) He applied to the facts of this case generally accepted principles, in particular, a concept known as the

“transference phenonomon,” which involves the “displacement of feelings derived from past relationships onto the current physician/patient relationship.”¹¹ “[T]he ‘transference phenomenon’ refers to the tendency of patients to become emotionally dependent upon, and trusting of, their psychologist or psychiatrist.” Benavidez v. United States, 177 F.3d 927, 930 (10th Cir. 1999). Mishandling of the “transference phenomenon” by engaging in sexual relations with a patient or client has been recognized as a basis for imposing liability on the professional. Id. at 930; Dausch v. Rykse, 52 F.3d 1425, 1434 n.5 (7th Cir. 1994); Simmons, 805 F.2d at 1364-66; Vetter v. Subotnik, 844 F.Supp. 1352, 1356 (D. Minn. 1992).

Dr. Rutter’s application of this accepted principle to the relationship between Patel and Swami Rama was not irrational. Considering the holistic healthcare environment offered by the Himalayan Institute, Swami Rama’s position as the embodiment of the Institute’s combination of Eastern and Western approaches to healthcare, and the Patel family relationship to Swami Rama as the family guru, he could logically conclude that Patel reposed in Swami Rama tremendous trust such that she would be expected to rely upon his insistence that sex with him was for her good and that she understandably believed that she could not risk alienation of his care and affections by rejecting him. Clearly, application of the transference phenomenon to the factual scenario presented in this case did not render Dr. Rutter’s opinions unreliable.¹²

¹¹ See generally, Gabbard and Nadelson, “Professional Boundaries in the Physician-Patient Relationship,” 273 JAMA 1445 (May 10, 1995).

¹²It should be noted that the defense did not proffer any expert witness to contradict Dr. Rutter and did not present any evidence disputing the reliability of the “transference
(continued...)

The final consideration for admissibility of Dr. Rutter's testimony was that it "fit" the matters at issue in the case. Plainly, Dr. Rutter's testimony was highly relevant. Moreover, it pertained to matters not necessarily within the ken of the average juror. As recognized in Tyus v. Urban Search Management, 102 F.3d 256, 263 (7th Cir.), cert. denied, 520 U.S. 1251 (1996), "[s]ocial scientists in particular may be able to show that commonly accepted explanations for behavior are, when studied more closely, inaccurate." This observation is plainly applicable where, as here, it is necessary to understand why Patel's acquiescence to sex with Swami Rama should not be regarded as consensual. Dr. Rutter's testimony was also helpful in assisting the jury understand why Swami Rama's activities should be regarded as improper. Even if the jury could have drawn this conclusion without his testimony, expert testimony may nonetheless be admissible as an aid in drawing that inference. See United States v. Hines, 55 F.Supp. 2d 62, 64 (D. Mass. 1999).

In Kumho, the Court stated:

Experts of all kinds tie observations to conclusions through the use of what Judge Learned Hand called 'general truths derived from . . . specialized experience.' And whether the specific expert testimony focuses upon specialized observations, the specialized translation of those observations into theory, a specialized theory itself, or the application of such a theory in a particular case, the expert's testimony often will rest 'upon an experience confessedly foreign in kind to [the jury's] own.' The trial judge's effort to assure the specialized testimony is reliable and relevant can help the jury evaluate that foreign experience, whether the testimony reflects scientific, technical, or other specialized knowledge. 143 L.Ed. 2d at 250-51.

¹²(...continued)
phenomenon" as a problem encountered in the type of relationship existing between Patel and Swami Rama.

Dr. Rutter applied his specialized experience and observation to the facts of this case. His specialized testimony was found to be reliable and relevant, and the Himalayan Institute has not presented any facts or authority to call into doubt these determinations. Accordingly, the Himalayan Institute is not entitled to a new trial based upon the admission of Dr. Rutter's opinions.

4. Improper Remarks during Opening Statements and Closing Arguments

The Himalayan Institute contends that the Court erred in refusing to grant a mistrial based upon the following remark made by Patel's counsel during opening statements:

[Jasmine Patel] went to a trusted friend of the family and told him what had happened. Ultimately, he advised that she tell the parents. She went to the parents, she told the parents, and they were absolutely floored, as well you can imagine. And the action that was decided upon was that they were going to have to do something about this. And so Mr. Patel took Jasmine's essay, wrote to everyone they knew about what happened to her, enclosing copies of her essay. Mr. Patel wrote letters to the lead persons of the Himalayan Institute, attaching copies of Jasmine's essay, saying this happened to my daughter. You know that these other allegations have to be true. We've got to do something about this. And he offered a number of suggestions as to what might be done to stop Swami Rama from abusing the next victim. [Tr. 8/12/98 at 49; emphasis added.]

The Himalayan Institute contends that the emphasized statement was an inappropriate allusion to evidence of settlement efforts proscribed by Federal Rule of Evidence 408.

Rule 408, in pertinent part, provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount.

Counsel's remark would not appear to constitute the type of evidence of settlement negotiations proscribed by Rule 408. It was made in the context of asserting that the Himalayan Institute was deliberately indifferent to charges of sexual improprieties by Swami Rama. The defense, itself, offered testimony of Jasmine Patel's father of conversations he had with Dr. Tigunait after Jasmine Patel had sent her essay to the Institute. (Tr. 8/29/97 at 104-05.)

Improper remarks by counsel warrant a new trial only where it is "more than 'reasonably probable' that the verdict was influenced by the prejudicial statements." Stanton by Brooks v. Astra Pharmaceutical Products, 718 F.2d 553, 579 (3d Cir. 1983). The statement that Mr. Patel offered some suggestions as to how to prevent Swami Rama from abusing other women does not plainly contravene Rule 408. Nor is it the type of remark that could have so prejudiced the jury as to deny the Himalayan Institute a fair trial. The isolated statement occurred at the inception of a lengthy trial, and it is not reasonably probable that the verdict was influenced by this remark.

The closing arguments to which the Himalayan Institute objects also were not of a nature to have so inflamed the jury as to "impair gravely the calm and dispassionate consideration of the case by the jury." Neal v. Toyota Motor Corp., 823 F. Supp. 939-944 (N.D.Ga. 1993). The Himalayan Institute contends that counsel improperly told the jury, "[I]n order to send the message, you need to consider whether "it is necessary to close down a facility like the Himalayan Institute, with its multi-millions in assets. . . ." (Tr. 9/3/97 at 130.) The Himalayan Institute points out that its Honesdale facility was appraised at \$1.6 million, the precise amount awarded in punitive damages, thus showing that plaintiff's counsel had improperly suggested a dollar amount of punitive damages.

But Patel's counsel never mentioned a specific amount, and the Himalayan Institute had assets other than the Honesdale facility, including property located elsewhere having a value of several hundred thousand dollars and a \$2 million endowment. In any event, the Himalayan Institute did not object to the argument that the jury should consider awarding an amount of punitive damages that would close down the Himalayan Institute, but instead only objected to the exhortation that the jury issue a "huge award. . . ." (*Id.* at 131.) Thus, the Himalayan Institute waived any argument that plaintiff's counsel had improperly suggested a specific dollar amount to be awarded. See Dunn v. HOVIC, 1 F.3d 1371, 1377 (3d Cir.) (en banc), cert. denied, sub. nom. Owens-Corning Fiberglas Corp. v. Dunn, 510 U.S. 1031 (1993).

As to plaintiff's counsel urging a "huge" award, the Himalayan Institute has not cited any case that would suggest that such a general statement is inappropriate. Punitive damages are intended to punish and to deter, and there is nothing inherently prejudicial in asking that a jury return a "huge" award in order to serve those purposes. *Id.* at 1378. Accordingly, the Himalayan Institute is not entitled to a new trial based upon remarks made by counsel during opening statements and closing arguments.

C. The Alleged Excessiveness of the Punitive Damage Award

The Supreme Court has recognized the propriety of judicial oversight of a punitive damage award to assure that it is not greater "than reasonably necessary to punish and deter." Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1, 19 (1991); see also Dunn v. HOVIC, 1 F.3d at 1385. The Court has identified three "guideposts" by which to assess the reasonableness of a punitive damage's award: (1) the degree of reprehensibility of the defendants' actions; (2) the relationship of the amount of punitive damages awarded to

the actual or potential harm; and (3) the difference between the punitive damage award and civil penalties that may be authorized or imposed in comparable cases. BMW of North America Inc. v. Gore, 517 U.S. 559, 574-75 (1996).

As to the first factor -- the reprehensibility of the defendant's conduct -- our Court of Appeals recently suggested that consideration be given to whether the conduct (a) caused economic as opposed to physical harm; (b) would be regarded as unlawful in all states; (c) involved repetitive acts rather than an isolated incident; (d) is intentional; (e) included deliberate false statements rather than omissions; and (f) is aimed at a vulnerable target. See InterMedical Supplies, Ltd. v. EBI Medical Systems, Inc., 181 F.3d 446, 467 (3d Cir. 1999). Because the jury imposed both direct and vicarious liability for punitive damages, the factors identified above should be applied to the actions of both Swami Rama and the Himalayan Institute.

Swami Rama's conduct is indefensible. He abused his position as the revered spiritual leader of an organization devoted to physical and emotional well-being. He had his way with Patel by convincing her that he alone knew what was best for her and that it would be sinful to disobey him. This conduct caused extreme emotional harm. While it cannot be said that Swami Rama's conduct would be regarded as criminal in all states, Dr. Rutter testified without contradiction that it was unlawful in some states. (Tr. 8/26/97 at 113.) The conduct with Patel occurred over several months, and was but a pattern of sexually exploitive conduct he had pursued for years. Swami Rama lied to Patel and to those at the Himalayan Institute about his prior sexual transgressions. Finally, he directed his conduct at a most vulnerable victim, a girl still in her teens whom he knew was dependant upon him for her emotional stability. The degree of reprehensibility of Swami

Rama's conduct is, indeed, extreme.

The conduct of the Himalayan Institute was no less reprehensible. Its officers and directors had received on numerous occasions credible information of Swami Rama's sexual transgressions. As an organization, the Institute buried its head in the sand of a delusional rationalization that the Swami Rama would not engage in conduct harmful to one of his disciples. (E.g., PX-41; Tr. 8/20/97 at 179.) Not only did the Institute engage in denial of the worst sort, but it also sought to deflect attention from the Swami Rama by slandering the women who complained. They were the ones who were called "crazy" or "unstable." (Tr. 8/19/97 at 176; Tr. 8/18/97 at 117-18.) In response to the Yoga Journal article, the Institute sent out a letter to the community asserting that the allegations against Swami Rama were unsubstantiated and that those making the claims were psychologically unbalanced. (PX-34.) Drs. Ballentine, Clarke and Tigunait urged the members of the Himalayan Institute not to put much "energy into such negative things." (Tr. 8/20/97 at 175.)

In response to Dina Capobianco's complaint, Dr. Ballentine told her that she was hallucinating. (Tr. 8/18/97 at 69-72.) When Robert Hughes, Jr. raised questions in a letter to Drs. Ballentine and Clarke in May of 1989, Dr. Ballentine responded by removing Hughes from his position. (Tr. 8/21/97 at 51-52.) He also wrote to Hughes, chastising Hughes for relying upon rumors of "emotionally disturbed," "jealous and vindictive" individuals. (PX-10; Tr. 8/19/97 at 63.) Neither Ballentine, Clarke nor Tigunait responded to the detailed allegations set forth in Dr. Leslie Smith McDaniels' letter. (Tr. 8/14/97 at 91-93.) Even when he learned in 1992 that his former wife had engaged in sexual relations with the supposedly celibate Swami Rama, Dr. Ballentine did nothing. (Tr.

8/20/97 at 191-95.) On the contrary, he rationalized that sex with the Swami Rama had caused his wife to “blossom.” The evidence presented at trial showed that the Himalayan Institute engaged in the same pattern of denial and victim attacks when confronted with Jasmine Patel’s allegations. (Tr. 8/14/97 at 52-57; Tr. 8/29/97 at 30-31.)

The Himalayan Institute seeks to minimize the severity of the conduct at issue here by pointing out that the jury found that Patel had consented to having sex with Swami Rama and that no officer or director of the Institute knew that Swami Rama was having sex with Patel while it was occurring. This argument disregards the fact that Patel’s acquiescence to Swami Rama’s predatory tactics was accomplished by his abuse of his position of authority and trust. It also ignores the fact that Patel became a victim because of the Himalayan Institute’s repeated cover-ups of Swami Rama’s prior sexual transgressions. Contrary to the Himalayan Institute’s assertion, the conduct at issue here is not close to the “very bad side of the spectrum” for awarding punitive damages, but rather falls on the rather “completely amoral side of the spectrum.” (Brief in Support of Motion for New Trial (Dkt. Entry 448) at 29.) Thus, the reprehensibility of the conduct of Swami Rama and the Himalayan Institute justified a large punitive damage award.

The second guidepost for assessing the reasonableness of a punitive damage award is the ratio of the punitive damages to the actual harm inflicted. See McDermott v. Park City Corp., 11 F. Supp. 2d 612, 631 (E. D. Pa. 1998). In this case, the punitive damages were less than six times the amount of compensatory damages. While there is no bright line test for comparing the amount of punitive damages to actual damages, the Court has held that a 4-to-1 ratio does not warrant setting aside a punitive damage award. Haslip, 499 U.S. at 23-24. In TXO Production Corp. v. Alliance Resources Corp., 509

U.S. 443, 460 (1993), the Court held that a ratio of 10-to-1 was not excessive given the potential harm to the plaintiff. In McDermott, a ratio of 8-to-1 was viewed as permissible. 11 F. Supp. 2d at 631. Given the fact that the degree of reprehensibility is “[p]erhaps the most important indicium of the reasonableness of a punitive damages award,” Gore, 517 U.S. at 575, a ratio of punitive damages to compensatory damages of less than 6-to-1 in this case does not militate in favor of a reduction in punitive damages.

The final factor concerns a comparison of the punitive damage award to the civil or criminal penalties that could be imposed for comparable misconduct. Id. at 583. The Himalayan Institute offers two potential comparisons. First, it suggests that the \$300,000 cap on damages awarded for violations of Title VII of the Civil Rights Act of 1964, set forth at 42 U.S. C. § 1981a(b)(3)(D), should be considered. (Brief in Support of Motion for New Trial at 31.) Alternatively, it suggests that the cap of 200% of the compensatory damages awarded established in the Health Care Services Malpractice Act, 40 Pa. C.S. § 1301.812-A(g), be applied here.

As to the latter suggestion, the Pennsylvania legislation does not apply to intentional misconduct. This case involves intentional misconduct of Swami Rama. Moreover, the jury found that both Swami Rama and the Himalayan Institute engaged in intentional infliction of emotional distress. Thus, the statutory cap under the Health Care Services Malpractice Act does not offer a pertinent analogue here.

Nor do damage caps placed on employment discrimination awards fit the situation presented here. This is not an employment discrimination case under federal law. It is a case of sexual manipulation and exploitation under state law. The community’s outrage, as expressed in the punitive damage award, should not be stifled by a federal statutory

cap applicable to employment discrimination.

In Inter Medical Supplies, 181 F. 3d at 468, our Court of Appeals observed:

‘[A] violation of common law tort duties [may] not lend [itself] to a comparison with statutory penalties. The fundamental question is whether [the defendant] had reasonable notice that its [conduct] could result in such a large punitive award.’

In this case, that fundamental question must be answered in the affirmative. The conduct at issue was so egregiously wrong that the Himalayan Institute could reasonably anticipate suffering the consequence of a huge punitive damage award. Accordingly, the Himalayan Institute’s challenge to the size of the punitive damage award must be rejected.

D. “Delay Damages” under Pennsylvania Rule of Civil Procedure 238

Rule 238 of the Pennsylvania Rules of Civil Procedure, in pertinent part, provides:

(a) (1) At the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant . . . found to be liable to the plaintiff in the verdict of a jury . . . , and shall become part of the verdict, decision or award.

(2) Damages for delay shall be awarded for the period of time . . . from a date one year after the date original process was first served in the action up to the date of the award, verdict or decision.

(b) The period of time for which damages for delay shall be calculated under subdivision (a)(2) shall exclude the period of time, if any,

(1) After which the defendant has made a written offer of (i) settlement in a specified sum with prompt cash payment to the plaintiff . . . and continued that offer in effect

for a least 90 days or until commencement of trial, whichever first occurs, which offer was not accepted and the plaintiff did not recover by award, verdict or decision, exclusive of damages for delay, more than 125% of . . . the specified sum

Both parties concede that Rule 238 has been regarded as substantive in nature and therefore binding in this diversity action. See Fauber v. KEM Transportation & Equipment Co., 876 F.2d 327, 328 (3d Cir. 1989). Patel claims delay damages from August 25, 1995 (one year after service of process was effected) through September 4, 1997, the date of the verdict. She has calculated the amount of the delay damages on the compensatory award to be \$52,500.

The Himalayan Institute, while not contesting Patel's calculation, contends that its written offer of judgment in the amount of \$350,000 terminated the running of delay damages as of the date it was made, July 10, 1997. In this regard, it notes that the compensatory damage award of \$275,000 was below the amount of the written offer of judgment. Patel counters that the Court should consider the aggregate award of compensatory and punitive damages in determining whether the offer served to cut off delay damages as of July 10, 1997. Resolution of this dispute thus determines whether delay damages terminate on July 10, 1997 or September 4, 1997, a difference of 57 days.

There is no need to resolve the question of whether punitive damages should be considered in determining whether the verdict is more than 125% of the written offer. Rule 238 makes clear that to qualify as a written offer that terminates the running of delay damages the written offer must either be in effect for at least 90 days or until commencement of trial, whichever first occurs. In this case, the Offer of Judgment

specified that it had to be accepted in writing within 10 days, or “it shall be deemed withdrawn.” Trial did not commence until August 6, 1997, when the jury was selected. Because the offer stood open for only 10 days, and the trial did not commence during those 10 days, the Offer of Judgment did not serve to terminate the running of delay damages under Rule 238. Accordingly, the sum of \$52,500 shall be added to the \$275,000 in compensatory damages awarded by the jury.

IV. CONCLUSION

For all of the foregoing reasons, the Himalayan Institute’s Motion for a New Trial or a Remittitur will be denied. Patel’s Motion for Rule 238 Delay Damages will be granted. An appropriate order is attached.

/s/

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

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

JASMINE PATEL

Plaintiff

v

HIMALAYAN INTERNATIONAL
INSTITUTE OF YOGA SCIENCE
AND PHILOSOPHY OF THE USA

Defendant

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:
:
: 3:CV-94-1118
: (Chief Judge Vanaskie)
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ORDER

And Now, this 9 day of December, 1999, for the reasons set forth in the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Defendant's Motion for New Trial or Remittitur (Dkt. Entry 363) is **DENIED**.
2. Plaintiffs' Motion for Rule 238 Delay Damages (Dkt. Entry 396) is **GRANTED**.

The Clerk of Court is to amend the Judgment in favor of Plaintiff, Jasmine Patel, by adding the amount of \$52,500 to the \$275,000 in compensatory damages awarded by the jury.

3. The Clerk of Court is directed to mark this matter **CLOSED**.

/s/

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania