**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

October 14, 1997

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**

**NOTICE**

**This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.**

**A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.**

**No. 96-1559**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**BARBARA J. KOEHLER,**

**PLAINTIFF-APPELLANT,**

**V.**

**ZURICH INSURANCE COMPANY,**
**STRAUSS BROTHERS PACKING COMPANY, INC.,**
**AND JEFFREY A. SCHUSTER,**

**DEFENDANTS-RESPONDENTS,**

**FAMILY HEALTH PLAN COOPERATIVE AND**
**OFFICE OF WORKMAN'S COMPENSATION,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JACQUELINE D. SCHELLINGER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Barbara J. Koehler appeals from a judgment finding her sixty percent negligent and the defendants forty percent negligent. She contends that the jury's determination that she was more negligent than the defendants was not supported by credible evidence and that a new trial should be ordered in the interest of justice pursuant to § 752.35, STATS. We affirm.

Koehler was employed by Strauss Brothers Packing Company as a meat grader by the United States Department of Agriculture. She worked in a holding cooler where, on a regular basis, heavy racks of meat were pushed down overhead rails. On March 6, 1990, Schuster was pushing "veal trees" along an open rail. He and other witnesses testified that before pushing the meat down the rail, he would yell "tree coming down" or "veal tree coming" and whistle a warning. Schuster further testified that the fact that a veal tree is coming down the rail system can be detected by the noise that is created. Schuster testified that on the day in question Koehler responded to his warning by poking her head out into the open aisle as she was working in the adjoining aisle of meat products. Koehler was struck by a veal tree, knocked to the floor and injured. Subsequently, Koehler filed a personal injury action against the defendants. At trial, Koehler testified that before she was struck by the veal tree, she did not hear any warnings and that she was preoccupied with the supervision of another worker. The jury ultimately concluded that Koehler was sixty percent negligent and Schuster was forty percent negligent. The trial court affirmed this finding in its decision on motions after the verdict.

A jury's verdict will be sustained if there is any credible evidence to support it. ***Meurer v. ITT Gen. Controls***, 90 Wis.2d 438, 450, 280 N.W.2d 156, 162 (1979). This is especially true when the trial court has approved the jury's verdict. ***Fehring v. Republic Ins. Co.***, 118 Wis.2d 299, 305, 347 N.W.2d 595,

598 (1984). Questions of apportionment of negligence are ordinarily within the province of the jury. ***Stewart v. Wulf***, 85 Wis.2d 461, 471, 271 N.W.2d 79, 84 (1978); ***Sabinasz v. Milwaukee & Suburban Transp. Corp.***, 71 Wis.2d 218, 222, 238 N.W.2d 99, 101 (1976).

The defendants presented credible evidence upon which the jury could reasonably find that Koehler was more negligent than Schuster. The movement of large parcels of meat in and around the area where she worked was part of the nature of Koehler's work environment. Although there was conflicting testimony regarding whether Schuster warned Koehler about the meat carcass, the jury evidently believed that Schuster warned Koehler. The credibility of the witnesses and the weight to be afforded their individual testimony are left to the jury, and, where more than one reasonable inference can be drawn from the evidence, we must accept the inference drawn by the jury. ***Brain v. Mann***, 129 Wis.2d 447, 452, 385 N.W.2d 227, 230 (Ct. App. 1986). It was the jury's call whether Schuster did in fact warn Koehler. Based on the entire record, we conclude there is credible evidence to support the jury's verdict.

Koehler also claims that she should be granted a new trial under § 752.35, STATS., because there will be a miscarriage of justice if the verdict is allowed to stand. To reverse on the grounds that it is probable that justice has miscarried, we must be satisfied that a new trial will probably produce a different result. ***Camelot Enterprises, Inc. v. Mitropoulos***, 151 Wis.2d 277, 285, 444 N.W.2d 401, 404 (Ct. App. 1989). We are not persuaded that a second trial would probably produce a different result. We, therefore, decline to exercise our authority under § 752.35 to reverse and order a new trial.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.