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Expert Analysis

Recent Illinois Verdicts Reinforce Potency Of Remittitur

By **Agelo Reppas** January 30, 2018, 11:15 AM EST

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As tort defendants and their insurers continue to face enormous exposure in catastrophic personal injury cases, they are more and more frequently adding appellate specialists to their trial teams. In addition to lending a fresh perspective to the case, embedded appellate counsel assist in preserving error for appeal, building a comprehensive record and drafting key motions, jury instructions and the verdict form.

Just as critical to the success of any future appeal are post-trial proceedings, a defendant's lone opportunity to challenge a verdict as excessive in the court in which it was rendered. Two recent record-setting verdicts from the Circuit Court of Cook County, Illinois, illustrate the value appellate specialists, well-versed in navigating the post-trial motions maze, can impart when confronted with a jury's exorbitant damages award.

Three months ago, a Cook County jury returned a $54,000,000 verdict in a trucking accident case.[1] Denton et al. v. Universal Am-Can Ltd. et al. involved a vehicular accident that occurred on an interstate in Indiana. The plaintiff was driving southbound on the interstate when an elderly driver approached driving the wrong way. All southbound traffic, with the exception of defendant's semitractor-trailer truck, slowed down or otherwise took cautionary measures.

The semitractor-trailer truck driver rear-ended the plaintiff's automobile, causing him head, neck and knee injuries. The jury awarded $19,000,000 in compensatory damages and $35,000,000 in punitive damages. The punitive damages award appears to have been based on the defendant's hiring and retention of the semitractor- trailer truck driver, who had a checkered driving record and a felony conviction arising from a road-rage incident.

Earlier this month, the City of Chicago and its insurer paid $115,000,000 in a post-trial settlement to a paraplegic plaintiff.[2] Darden v. City of Chicago et al. involved an accident at O'Hare International Airport that occurred when a pedestrian shelter, weighing more than 750 pounds, came loose and fell on the plaintiff. The impact severed the plaintiff's spinal cord, paralyzing her from the waist down.

A subsequent investigation found that the shelter at issue, as well as other shelters, had missing bolts, corroded parts and/or broken brackets. The City of Chicago admitted liability and the case proceeded to a damages-only trial, which culminated in a $148,000,000 jury verdict. The City of Chicago filed post-trial motions challenging the verdict as excessive. While these motions were pending, the City of Chicago's insurer successfully negotiated a $115,000,000 settlement.

Denton and Darden not only underscore Cook County's notoriety as a perennial "judicial hellhole," they serve as a reminder of the importance of post-trial motion practice. When hit with a runaway verdict, defendants and their insurers' first inclination may be to shift focus immediately to the appeal. But it is difficult to obtain appellate relief from an excessive verdict, due to the limited scope of review and the appellate court's reluctance to interfere with the jury's findings. For this reason, post-trial relief in the trial court represents the best chance for a reduced verdict.

One often-overlooked avenue of relief is remittitur. Remittitur is a mechanism whereby an excessive verdict is reduced to an amount, which the trial court has wide discretion to determine, that is supported by the evidence. If the trial court is inclined to grant such relief, the plaintiff has two options: either accept the remitted amount or retry the case.

In this way, remittitur can have a powerful coercive effect on the plaintiff. Because the remitted amount must be borne out by the evidence, it will likely be high enough to give the plaintiff pause about refusing remittitur. Chances are good that the plaintiff cannot win a verdict from a new jury that is both significantly higher than the remitted amount and likely to withstand another excessiveness challenge, such that the plaintiff would find it worthwhile to risk the delay, expense and unpredictability of a retrial.

What is more, an order conditioning denial of a new trial on the plaintiff's acceptance of the remittitur is difficult, if not impossible, to overturn on appeal. If the plaintiff accepts the remittitur, which then becomes akin to a consent judgment, the plaintiff waives the right to appeal — notwithstanding that the plaintiff's acceptance is under protest. If the plaintiff refuses the remittitur, the order granting a new trial is not appealable as of right until after the retrial concludes. Even then, the appellate court's consideration of the order's merits is constrained by the most deferential standard of review.

Although remittitur, as is true of any excessive damages challenge, succeeds only rarely and only in the most extreme cases, success stories do exist. One such example is another recent Cook County case, Miyagi v. Dean Transportation Inc. In late 2017, a trial court slashed one category of the jury's damages awards, cutting the plaintiff's total $10,000,000 verdict nearly in half.[3] The Miyagi plaintiff was injured when she was struck from behind by a dolly carrying 350 pounds of loaded milk crates. The jury awarded $7,300,000 for future medical expenses, even though the most the plaintiff had requested for this damages category was $100,000. On post- trial motions, the trial court found the award excessive and reduced it to $3,650,000.

Miyagi demonstrates that the real value of remittitur lies perhaps not so much in its ultimate success, but in the leverage the prospect of its success gives defendants and their insurers in settlement negotiations. To be sure, Miyagi's remitted future medical expenses award is still quite large and likely to be further challenged on appeal, in light of the evidence and the plaintiff's maximum requested award. But there is no doubt that, as the defendant gears up for the appeal, having prevailed to any extent on its remittitur request created more favorable settlement opportunities for the defendant and its insurer than they would have otherwise had.

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[1] Denton et al. v. Universal Am-Can Ltd. et al. (Case No. 15 L 1727).

[2] Darden v. City of Chicago et al. (Case No. 15 L 008311).

[3] Miyagi v. Dean Transportation Inc. (Case No. 14 L 774).