



ALERTS

Pennsylvania Expands Scope Of General Verdict Rule

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Highlights

Defendants waived right to appeal because they did not request a special verdict form, Pennsylvania Supreme Court rules

Evidentiary challenge to the testimony was insufficient to preserve the issue for appeal

Following Standard Suggested Jury Instructions did not preserve issue for appeal under circumstances here

A general jury verdict that fails to itemize each component of damages may not be appealed by a losing party claiming error or defect on just one of those components, the Pennsylvania Supreme Court ruled recently in *Estate of Cowher v. Kodali, MD, et al.*

The decision expands Pennsylvania's "general verdict" rule, under which the Commonwealth's courts conclude that litigants have waived their right to a new trial if a general jury verdict is supported by grounds later determined to be valid and invalid, and the party challenging the verdict did not request a special verdict form that would have clarified the basis for the verdict.

The *Cowher* opinion arises from the appeal of a medical malpractice

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verdict in favor of the plaintiff. The plaintiff-decedent suffered a fatal heart attack while jogging. The decedent's surviving spouse filed suit against her husband's medical providers, alleging they failed to adequately treat his pre-existing cardiovascular issues. She sought statutory damages under Pennsylvania's Death and Survival Acts. Survival Act damages emanate from the decedent's own legal rights, including that person's alleged pain and suffering and the wages they would have earned for their estimated life span. Death Act damages, commonly called "wrongful death," emanate from losses sustained by the decedent's family, such as funeral costs.

The defendants unsuccessfully moved to preclude evidence of the decedent's pain and suffering. During trial, a neighbor testified that the decedent's pace slowed, he went down on one knee, and lost consciousness approximately three minutes later. The plaintiff's expert then opined, based on the neighbor's live testimony, that the decedent had experienced pain and suffering. The defendants requested, and the jury was given, a verdict slip with two lines: one for Death Act and one for Survival Act. The jury found in favor of the plaintiff and awarded damages under each statutory provision.

On appeal, the defendants challenged the \$3,833,000 Survival Act award, which was more than \$1,132,502 higher than the economic damages alleged by the plaintiff's expert. The defendants reasoned that the difference between the decedent's alleged economic loss and the total Survival award must be attributed to pain and suffering. They argued the plaintiff failed to present adequate evidence supporting the conclusion that three minutes of pain and suffering constituted more than \$1 million in damages, and this prejudicially affected the ultimate award.

The Superior Court had granted a new trial on Survival damages, and the Supreme Court reversed, holding that the jury's lump-sum Survival award was "supportable solely on the basis of" damages factors other than pain and suffering – including economic damages – which the jury was free to award in excess of the amount suggested by the plaintiff's expert. The cases that established and endorsed the general verdict rule, *Halper v. Jewish Family & Children's Service*, 963 A.2d 1282 (Pa. 2009), and *Shiflett v. Lehigh Valley Health Network, Inc.*, 217 A.3d 225 (Pa. 2019), involved suits where plaintiffs had asserted separate claims, or theories of relief, only some of which were later found invalid on appeal.

That precedent led many Pennsylvania litigants, including the defendants here, to take the position that the general verdict rule did not bar a new trial when a jury returned a lump sum verdict and the issue on appeal was an erroneous evidentiary ruling, rather than whether the evidence supported some of a plaintiff's claims or theories of relief. The court, however, rejected that argument in *Cowher*, finding "[t]he general term 'issue' encompasses the erroneous introduction of evidence just as it includes an invalid liability theory, and much else besides."

The court also rejected the defendants' argument that their request for a new trial was not waived because Pennsylvania's Suggested Standard Civil Jury Instructions call for the damages to be awarded in a lump sum, as they were here. Instead, the court concluded that under the long-standing general verdict rule, a defendant waives the right to a new trial when they complain the jury "may have relied on a factual theory unsupported by the evidence when there was sufficient evidence to

support another theory properly before the jury.”

The court also emphasized that the defendants’ motion in limine on pain and suffering evidence put them on notice this could be an appellate issue, yet they failed to request special verdict interrogatories at multiple junctures, which constituted affirmative waiver.

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