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C A S E A L E R T

WITH AMICUS GUIDANCE FROM M&W'S BILL BLOOM, THE NJ SUPREME COURT SETS A NEW STANDARD FOR ADDITUR AND REMITTITUR OF JURY AWARDS

On September 24, 2019, the New Jersey Supreme Court issued an opinion in [Orientale v. Jennings](#), which reshapes the landscape of post-verdict motions for a new trial. Prior to [Jennings](#) a trial court had the ability to modify an excessively high or low verdict in lieu of ordering a new trial - subject only to the unilateral acceptance of such modification by the party favored by the jury's verdict. If for example a plaintiff were to obtain an excessive verdict of \$5 million and the trial court were to remit the award to \$1 million in lieu of a new trial, plaintiff would have the choice of accepting the reduced \$1 million award rather than retrying the case. Similarly, a defendant against whom judgment of \$10,000 was entered in a case deemed by the judge to be worth at least \$500,000 would have the opportunity to accept an award of \$500,000 rather than risk a new trial.

As of this Tuesday, the trial court still has the ability to modify the verdict, but either litigant may reject the modification to demand a new trial on damages.

In [Jennings](#), plaintiff pursued an underinsured motorist claim against Allstate, after receiving \$100,000 from the tortfeasor's insurer. The matter was tried and a verdict rendered of a mere

\$200. Plaintiff moved for a new trial or an additur, and the trial judge employed an additur in the amount of \$47,500, which the judge characterized as the lowest award that a reasonable jury could have returned given the evidence at trial. The defendant accepted the additur, which still was below the threshold of the credit from the tortfeasor's policy, and a judgment was entered in favor of Allstate.

After the Appellate Division affirmed, the Supreme Court granted certification. Following initial argument in October 2018 the Court invited *amicus curiae* participation to address two questions: (1) Should both parties have the right to object to a court-imposed adjustment of the verdict (additur/remittitur) and (2) In employing additur or remittitur, should the Court's aim be to award a reasonable amount or the highest/lowest amount supported by the evidence?

[Bill Bloom](#) appeared before the Court on behalf of the New Jersey Defense Association. In arguing for a standard requiring adjustment to the highest or lowest amount supported by the evidence, Bill reasoned that even an unduly excessive or unduly low verdict can have meaning. One can reject the dollar value

the jury places on its findings, but still acknowledge and utilize those findings to guide the post-verdict proceedings. In short, one can reasonably discern from an excessive verdict that the jurors found the plaintiff to have met the burden of proof, and conversely in the case of an unduly low verdict that the plaintiff did not. Acknowledging this, it reasonably follows that in the case of remittitur, the Court's aim should be to reduce the verdict to highest reasonable amount, and for additur the lowest. In so doing, Bill contended, we best balance the competing interests of preserving the constitutional right to a jury trial and fostering judicial economy.

The Court took a pragmatic approach, adopting a standard which essentially replicates a non-binding arbitration in which the court determines a "reasonable" award, which either party may reject to compel a retrial. The clarity of this decision should reduce appeals and increase the likelihood of reasonable settlements by leveling the playing field, regardless of which party receives the benefit of the judicial intervention.

Friends and clients are welcome to forward any questions about this important decision to [Bill Bloom](#) or any of [our partners](#).

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