

Motions for Directed Verdict: Failure to Move Is At Your Peril!

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Trial counsel must make strategic decisions about whether and how to pursue their position before the court, striking a balance between preservation and the court's ire. But when it comes to motions for a directed verdict, keeping mum will leave you in a bind. In *Seneca Ins. Co. v. Beal*, No. CV 13-1737, 2018 WL 2984975 (W.D. Pa. June 14, 2018), a jury had returned a verdict in favor of the defendant, and against the plaintiff, on plaintiff's negligence claim arising out of a fire that caused significant damage to plaintiff's shopping plaza. Although the jury concluded that defendant was negligent when he removed a neon sign from the façade of a storefront in the plaza, plaintiff had not demonstrated that those actions or omissions were the factual cause of the fire. In its post-trial motion for a new trial, or in the alternative for judgment notwithstanding the verdict, plaintiff argued, among other things, that the jury had been confused by improper expert testimony and there was insufficient evidence to support the verdict. The Western District of Pennsylvania denied the plaintiff's post-trial motion. Because the case was submitted to the jury under Rule 50(a), and plaintiff had not moved for directed verdict under that rule, the district court concluded plaintiff could not move for judgment as a matter of law under Rule 50(b) and had waived those arguments. **Preservation Tip** While the motion for a directed verdict may feel like a futile effort, it is necessary to preserve your post-trial options. Err on the side of caution; don't forego this motion!

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