

Against the Wait: Failure to Object to Jury's Award of Future Lost Wages Precludes Verdict Challenge

APPELLATE & TRIAL SUPPORT | LITIGATION AND TRIALS | JANUARY 22, 2019



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Interrogatories submitted to the jury are painstakingly negotiated by trial counsel. But what should you do if the jury goes off on its own, awarding damages that are beyond the scope of the interrogatories and evidence presented at trial? Object!

As the Pennsylvania Supreme Court demonstrated in *Stapas v. Giant Eagle, Inc.*, No. 44 WAP 2017, 2018 WL 6070787 (Pa. Nov. 21, 2018), failure to do so could leave you in a bind. There, the court concluded that the defendant waived its right to challenge the jury's verdict by failing to object to the verdict before the jury was dismissed.

In *Stapas*, the plaintiff pursued a negligence claim arising out of a gunshot injury he sustained when he was seventeen. The trial court charged the jury that, if it found the defendant liable, the jury's damages award should fairly and adequately compensate the plaintiff for all the "physical and financial injuries he has sustained as a result of the incident," and that the amount should compensate the plaintiff "completely for damages sustained in the past, as well as damage [plaintiff] will sustain in the future." The defendant did not object to the trial court's instructions on damages or request an instruction on past or future wage loss.

Contrary to the trial court's instruction that the jury return its verdict for the plaintiff in a single lump sum, the jury filled out the damages interrogatory by handwriting an amount next to each category of damages. In the "wage loss" category, the jury awarded the plaintiff \$1.3 million in future lost wages, even though the plaintiff made no claim for and presented no evidence on future lost wage damages. Again, the defendant did not object, and the jury was released.

Later, the trial court denied defendant's motion for post-trial relief challenging the jury's ability to award damages for future lost wages, concluding that the defendant had waived its right to a new trial by failing to object to the jury's damages award before the court dismissed the jury. The trial court noted that it could have required the jury to clarify its verdict had the defendant objected before the jury was dismissed. The intermediate appellate court disagreed, vacating the trial court's judgment and remanding the case for a new trial on damages.

The Pennsylvania Supreme Court reversed, rejecting the defendant's attempt to frame its argument about future wage loss as an against-the-weight-of-the-evidence argument. The court explained that the defendant's characterization of its challenge to the verdict as a weight of the evidence challenge "does not avoid waiver" and that "its failure to object to the jury instructions, damages interrogatory, and jury verdict waived the grounds raised in its post-trial motion."

Preservation Tip

An objection to a jury's verdict that is premised on trial errors—correctable before the jury is discharged—must be raised before the jury is discharged. If you have objections to a jury's award, make them before the jury is dismissed by the trial court.

