

# CPLR 4104: The Six-Person Jury

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On the basis of its inherent power to apply principles of law to a jury's findings where the "jury just simply refuses to render the required verdict; so long as in so doing the Court does not . . . substitute findings of its own for those of the jury,"<sup>139</sup> the Supreme Court, New York County, amended the jury verdicts in actions one and three. In court-completed verdicts in actions one and three, P1 and P3 recovered against D1, D2 and D3 for the amounts the jury had previously awarded P1 and P3. All other motions, with the exception of D2's motion in action two to dismiss D1's complaint, were denied.<sup>140</sup>

At first glance, *Welborn* is a noteworthy example of judicial enterprise since the decision logically interprets the jury's findings of liability. It may be argued, however, that the court should have followed the usual practice of giving the jury a second opportunity to follow its instructions and thereby render the completed verdicts itself.<sup>141</sup>

*CPLR 4104: The six-person jury.*

This section, which had permitted a party demanding a jury trial in civil cases to specify a jury composed of twelve or six persons, has been repealed.<sup>142</sup> The new CPLR 4104 limits to six the number of persons who shall compose a jury in civil actions. In keeping with this change, CPLR 4105 has been amended to specify that the first six persons who are approved must constitute the jury. Similarly, under CPLR 4109, the number of peremptory challenges has been reduced from six to three, and, under CPLR 8020(c), the jury fee has been reduced.

Six-person juries will "result in a substantial saving of time and money to the state, to litigants, and to jurors and their employers, without any substantial reduction in the quality of justice."<sup>143</sup> In New York County, it will ease the currently acute problem of obtaining qualified jurors.

ARTICLE 44 — TRIAL MOTIONS

*CPLR 4402: Mistrial motion must be made before verdict.*

Failure by trial counsel to make a timely objection to the court's rulings precludes review of the issue on appeal unless the appellate

<sup>139</sup> 68 Misc. 2d at 857, 328 N.Y.S.2d at 137.

<sup>140</sup> *Id.* at 858, 328 N.Y.S.2d at 138.

<sup>141</sup> See 4 WK&M ¶ 4404.22, citing Note, *Inconsistent Jury Verdicts in Civil Actions*, 37 NEB. L. REV. 596 (1956); cf. *Jacquin v. Syracuse Auto Rental & Taxicab Corp.*, 263 N.Y. 53, 188 N.E. 154 (1933).

<sup>142</sup> L. 1972, ch. 185, at 402, eff. May 28, 1972.

<sup>143</sup> 4 WK&M ¶ 4104.06.