

## CPLR 4111: Compromise Verdict Requires New Trial on All Issues

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## ARTICLE 41 — TRIAL BY A JURY

*CPLR 4111: Compromise verdict requires new trial on all issues.*

A compromise verdict is an unwarranted finding in favor of one party which is not based upon the evidence and which, therefore, is not permitted to stand. Such a verdict results when some of the jurors, differing as to the issue of liability, nevertheless agree to render a verdict in favor of the plaintiff, but for an amount clearly less than that to which he is entitled, if entitled to anything at all.<sup>113</sup>

*Lallo v. W.T. Grant Co.*,<sup>114</sup> a personal injury action, provides a recent illustration of such a compromise verdict. The jury, after deliberating for several hours, returned to the courtroom and indicated that it had reached an 8-4 decision in favor of the plaintiffs. In response to the jury's inquiry, the court informed the jurors that if they were to reach a 10-2 verdict for the plaintiffs they could determine the issue of damages. Shortly thereafter, the jury returned with the 10-2 verdict. Subsequently, the jury heard proof on the issue of damages and, by the same margin, rendered an award for the plaintiffs. The verdict as to damages was set aside as "grossly inadequate" by the court. The *Grant* court indicated that "there [had been] a reciprocal relinquishment of convictions upon liability and damages in order to arrive at a verdict,"<sup>115</sup> and properly granted a new trial on *all* the issues which had been raised, rather than that of damages alone.

*CPLR 4111: Use of interrogatories is advised.*

CPLR 4111 concerns itself with general and special verdicts as well as general verdicts accompanied by answers to written interrogatories. A general verdict is a finding by the jury for one of the parties, in which all the material questions are determined by the jury in favor of the successful litigant. Verdicts of this nature are often preceded by detailed and lengthy instructions of law from the court.<sup>116</sup> In a special

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<sup>113</sup> See *Friend v. Morris D. Fishman, Inc.*, 302 N.Y. 389, 98 N.E.2d 571 (1951); *Kepner v. Barry*, 24 App. Div. 2d 825, 264 N.Y.S.2d 129 (4th Dep't 1965); *Boudreau v. Damas Food Mkt. Corp.*, 49 Misc. 2d 913, 914, 268 N.Y.S.2d 840, 842 (N.Y.C. Civ. Ct. N.Y. County 1966): "It is essential to a compromise [verdict] that there be material concessions or yielding of opposing convictions."; 8 CARMODY-WAIT 2D, CYCLOPEDIA OF NEW YORK PRACTICE § 53.8 (1966).

<sup>114</sup> 31 App. Div. 2d 941, 298 N.Y.S.2d 802 (2d Dep't 1969).

<sup>115</sup> *Id.* at 942, 298 N.Y.S.2d at 804.

<sup>116</sup> See 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 4111.02 (1968). The general verdict has been subject to much criticism because of the very real possibility that the jury may have considered extraneous matters in arriving at its determination. See, e.g., *Skidmore v. Baltimore & Ohio R.R.*, 167 F.2d 54, 56 (2d Cir.), cert. denied, 355 U.S.