

CPLR 4111: Use of Interrogatories Is Advised

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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.¹¹³

Lallo v. W.T. Grant Co.,¹¹⁴ 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,"¹¹⁵ 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.¹¹⁶ In a special

¹¹³ 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).

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

¹¹⁵ *Id.* at 942, 298 N.Y.S.2d at 804.

¹¹⁶ 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.

verdict, however, the jury finds the facts, while the court, by applying the law to the facts, determines which party is entitled to judgment. The need for detailed instructions to the jury is thus obviated.¹¹⁷ A jury may also return a general verdict accompanied by answers to written interrogatories based on specific questions posed by the court. The use of special verdicts or general verdicts with answers to interrogatories is a matter entirely within the discretion of the court and, hence, is reviewable only when the exercise of discretion is abused.¹¹⁸

*Corbett v. Brown*¹¹⁹ is a recent case demonstrating the utility of the special verdict. The plaintiff, an employee of a contractor who was constructing a retaining wall on defendants' property, was injured when he was struck by a large piece of concrete. His complaint alleged both general negligence and negligence based upon failure to provide a safe place to work. The defendants brought a third-party action against the contractor, who in turn brought a fourth-party action against the supplier of equipment. After concluding that the trial court was in error when it held that contributory negligence was not available as a defense to plaintiff's second cause of action, the court advised that:

Upon the new trial, if different theories of negligence should again be invoked, the trial court would be well advised to make use of the procedure available under the statute (CPLR 4111), which permits the rendition of a special verdict or a general verdict accompanied by written answers to written interrogatories. Thus, if the defendants are again held liable for their negligence, the basis of the jury's determination would be ascertained.

The determination of liability in the third-party and fourth-party actions will depend upon the finding of negligence on the defendants' part, if any, and, therefore, the dismissal of the third-party and fourth-party complaints should be reversed.¹²⁰

ARTICLE 50 — JUDGMENTS GENERALLY

CPLR 5004: Conflict over legal rate of interest.

CPLR 5004 declares that the interest rate on judgments shall be at the "legal rate" unless otherwise provided by statute. The "legal" interest rate has traditionally been found in the so-called "usury statute" in the General Obligations Law.¹²¹ In 1968, the law was amended to

816 (1948); Sunderland, *Verdicts General and Special*, 29 YALE L.J. 253, 261 (1920). *But see* 5 MOORE'S FEDERAL PRACTICE ¶ 49.05 (2d ed. 1968).

¹¹⁷ 4 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 4111.03.

¹¹⁸ *Id.*

¹¹⁹ 32 App. Div. 2d 27, 299 N.Y.S.2d 219 (3d Dep't 1969).

¹²⁰ *Id.* at 32-33, 299 N.Y.S.2d at 224.

¹²¹ N.Y. GEN. OBLIGATIONS LAW § 5-501 (McKinney 1964).