



*Passion. Preparation. Persistence.*

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## THE BASSETT BULLETIN™

### **“IN THE INTEREST OF JUSTICE AND FAIRNESS”: NOT SO FAST.**

The Texas Supreme Court recently granted a Petition for Writ of Mandamus in *In Re United Scaffolding, Inc.*<sup>1</sup>

The Supreme Court addressed the issue of whether the trial court abused its discretion by disregarding the jury verdict and granting a new trial. The trial court’s sole reason for granting the new trial was that it was “in the interest of justice and fairness.”

#### **Trial Court**

James and Lisa Levine sued United Scaffolding, Inc. (United) for damages because of the injury James suffered when he fell from scaffolding built by United. After a jury trial, and based on the jury verdict, the trial court signed a judgment in favor of the Levines. However, the Levines were not satisfied with the jury verdict. Thus, the Levines filed a Motion for New Trial which asserted the following:

- The jury findings that no damages for physical pain and suffering, mental anguish, physical impairment, past medical care, and loss of earning capacity were against the great weight and preponderance of the evidence;
- The damages were manifestly too small; and
- The trial court should grant a new trial “in the interest of justice and fairness.”

The trial court granted their Motion for New Trial for the sole reason that it was “in the interest of justice and fairness” to do so. This ruling by the trial judge essentially threw out the jury verdict and required an entirely new trial and jury.

#### **Court of Appeals**

United petitioned the court of appeals by Writ of Mandamus asserting that the trial court abused its discretion in disregarding the jury verdict. A divided court denied relief.

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<sup>1</sup> 2010 Tex. Lexis 30 (Tex. 2010)

Interestingly, shortly after the court of appeals issued its opinion, the Texas Supreme Court held that a trial court acts arbitrarily and abuses its discretion if it disregards a jury verdict and grants a new trial, **but does not specifically set out its reasons**.<sup>2</sup> In that case, the Texas Supreme Court held that stating a new trial is granted “in the interest of justice and fairness” is **not** a sufficiently specific reason. It also held that a party challenging such an order does not have an adequate remedy by appeal.

### **The Texas Supreme Court**

United then sought Mandamus relief with the Texas Supreme Court. United felt that the trial court abused its discretion when (1) the only reason for granting the motion was “in the interest of justice and fairness” and (2) the jury verdict was supported by sufficient evidence.

The Levines asserted that *Columbia* was distinguishable because the trial court in their case actually identified the specific grounds warranting a new trial. The Texas Supreme Court felt the trial court’s order was not quite as clear as the Levines believed.

The Levines tried to renew arguments made by the dissent in *Columbia* that (1) Mandamus is not the proper vehicle to require trial judges to specify reasons for granting a new trial and (2) the benefits of a prompt retrial outweigh the detriments of interlocutory appellate review. The Texas Supreme Court again rejected those arguments in the instant matter.

The Texas Supreme Court did not buy the Levines’ argument that the trial court followed the applicable law in effect at the time it issued the order granting the new trial, and thus did not abuse its discretion. The Court noted that an erroneous legal conclusion is an abuse of discretion, even if it may not have been clearly erroneous when made.

United asserted that the trial court abused its discretion by granting the new trial because (1) the granting of the motion was based on the jury findings and (2) the jury’s verdict was supported by sufficient evidence. The Texas Supreme Court noted it could not presume the trial court granted the new trial on grounds asserted in the motion. The problem was clearly that the trial court simply granted the new trial based on “in the interest of justice and fairness, and nothing else.”

However, the Texas Supreme Court did not grant relief to United other than directing the trial court to specify its reasons for granting the new trial. It denied United’s request to direct the trial court to set aside its order granting the new trial. The Texas Supreme Court noted that it was “confident that the trial court will comply, and the writ will issue only if it fails to do so.”

### **What This Means For You**

A trial judge has limited discretion in overturning a jury’s decision after trial. However, there are situations where a trial judge can disregard a jury verdict. It is important that you take precautions to ensure that the trial verdict conforms with the evidence presented. Here are some things to keep in mind before trial and during trial:

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<sup>2</sup> In re Columbia Med Ctr. of Las Colinas, 290 S.W. 3d 204, 212-13 (Tex. 2009)

1. Preserve all physical evidence and records. You need to make sure the jury hears and sees the entire story.
2. Take careful notes during all phases of trial while your attorneys are focused on winning your case; they cannot see and hear everything.
3. Watch the jury because they will give off clues as to how the evidence is being absorbed by the jury. The attorneys cannot watch the jury, so you need to.
4. Let your attorney know what you are seeing and hearing. You have a very important role in sharing your observations with your attorney.



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