



*Passion. Preparation. Persistence.*

*Volume 8, Issue 5*

## THE BASSETT BULLETIN™

### MOTION FOR NEW TRIAL - ARE THE COURT'S HANDS TIED? THE JURY'S STILL OUT...

A jury's role in weighing the evidence and testimony to determine questions of fact and decide issues of guilt or liability represents an integral part of the American legal system. Only in limited situations can the trial judge set aside the jury verdict and grant a new trial. Texas law provides that a trial court abuses its discretion by granting a new trial without "specifying the reason it refused to enter judgment on the jury verdict." *In re Columbia*, 290 S.W.3d 204, 215 (Tex. 2009).

Unfortunately, the law is not entirely clear on just how specific the trial court needs to be in its Order granting a new trial. In a case currently pending, the Supreme Court of Texas will likely expound on the limitations imposed on a trial court's ability to set aside a jury's verdict and grant a new trial.

### *IN RE UNITED SCAFFOLDING, INC., RELATOR*

#### Summary of Facts

The Plaintiffs brought a negligence suit for damages against United Scaffolding, Inc. seeking more than \$9 million for Plaintiff James Levine's fall from a scaffold. The jury returned a verdict for the Plaintiffs, but the jury's award was limited to future medical of \$178,000.00.

The Plaintiffs filed a Motion for New Trial in which they argued that the jury's findings were against the great weight and preponderance of the evidence. The trial court granted the Motion for New Trial "*in the interest of justice and fairness.*"

After some legal wrangling between the parties over the specificity of the justification offered by the trial court for granting the new trial, the trial court issued an Amended Order on Plaintiffs' Motion for New Trial giving four reasons for granting the new trial. Still, the Defendants argued that the justification for granting the new trial lacked sufficient specificity.

On appeal, the Ninth Court of Appeals concluded that the trial court's explanation for granting the new trial was sufficient. However, a dissenting Justice concluded that the trial court's Amended Order did nothing more than restate vague conclusions without reasoning.

Now, the Supreme Court will likely address the level of specificity that a trial court must provide if it disregards a jury's verdict and grants a new trial.

## CURRENT LAW

A trial court abuses its discretion by granting a new trial without "specifying the reason it refused to enter judgment on the jury verdict." *Id.* Furthermore, if the court sets aside the jury verdict on a finding that holds that the verdict is not supported by factually sufficient evidence, "the court must detail all the relevant evidence and explain how it outweighs evidence supporting the verdict or how the verdict is so against the great weight and preponderance of the evidence that it is manifestly unjust." *Id.* at 211; see also *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998).

But how specific and detailed does the trial court have to be? The Supreme Court will hopefully address this issue and provide greater clarity regarding the limitations imposed on a trial court's discretion to grant a new trial after a jury renders a verdict.

## HOW WILL THE COURT'S DECISION AFFECT LITIGANTS?

No one knows how the Supreme Court will rule in this case. It's possible that the Court will leave the current law undisturbed and base its ruling on existing case law and precedent. More likely, however, the Court will attempt to provide a clearer standard by which trial courts will be held in justifying a decision to set aside the jury verdict. This new standard may increase the limitations imposed on a trial court's ability to set aside the jury verdict and grant a new trial.

If this is the case, litigants may have fewer legal options when the jury returns an unfavorable verdict. Quite simply, there will likely be fewer situations in which a trial court can justify granting a new trial notwithstanding the jury verdict.

With this in mind, parties to a lawsuit may have increased incentive to settle “coin-toss” cases to avoid the possibility of being stuck with an unfavorable verdict. It is important for the parties to have a candid conversation with their attorneys *early and often* to discuss the strengths and weaknesses of the case before the case proceeds to trial. Jury verdicts are unpredictable, and depending on the Supreme Court’s decision, trial courts may have less leeway when it comes to setting the jury verdict aside.



## **The Bassett Firm**

**Two Turtle Creek Village  
3838 Oak Lawn Avenue  
Suite 1300  
Dallas, Texas 75219  
(214) 219-9900 Telephone  
(214) 219-9456 Facsimile  
Toll Free: 1-800-310-9769  
[www.thebassettfirm.com](http://www.thebassettfirm.com)**

## **ATTORNEYS**

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. DANIEL OLIPHANT**
- **JOHN J. ROBERTS**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

---

Information regarding *The Bassett Bulletin*<sup>TM</sup> is available from Jennifer Graig ([jgrraig@thebassettfirm.com](mailto:jgrraig@thebassettfirm.com)) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*<sup>TM</sup> is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.