



NEW JERSEY SUPREME COURT RELEASES SIGNIFICANT DECISION REGARDING JURY SELECTION AND TRIAL ERROR

On July 23, 2009, the New Jersey Supreme Court issued a landmark opinion in *Pellicer v. St. Barnabas Hospital*, which reversed a final judgment in excess of \$70 million and remanded the case back to the trial court for a new trial on both liability and damages. That judgment was the highest award entered in a medical-malpractice case in New Jersey history. An appellate team led by Coughlin Duffy LLP convinced the Supreme Court that numerous errors in jury selection and in the conduct of the trial destroyed any confidence in the jury's verdict in this "difficult and emotionally-charged" case. The Court also found that the cumulative trial error prevented the jury from evaluating the evidence fairly, resulting in an award of damages that the Supreme Court termed "historic and extraordinary."

The case involved an infant who had suffered a loss of oxygen following successful surgery to repair spina bifida, a congenital defect in the spine. While the infant was recovering from surgery, the endotracheal tube that was used to ventilate him had become dislodged. During successive attempts to re-ventilate him, the infant's heart rate dropped. Ultimately, the infant was re-intubated, but by that time had suffered irreversible brain damage, resulting in severe cognitive and physical impairment.

The initial trial resulted in a mistrial. At the close of the re-trial, the jury returned a verdict of approximately \$76 million. The trial court vacated the award to the plaintiff's mother for loss of her child's consortium because that claim was not supported by the law, and entered final judgment of over \$70 million.

On appeal, the New Jersey Superior Court, Appellate Division, affirmed. Although the Appellate Division found that numerous errors had been committed during the trial, it decided that those errors, considered both individually and cumulatively, did not require reversal. The defendants then sought review by the New Jersey Supreme Court.

The Supreme Court found that during the jury selection process, several jurors had expressed unfavorable opinions about hospitals and healthcare professionals, including the hospital involved in the suit. Because the trial court permitted those remarks to be made in open court, as opposed to sidebar, the jury-selection process created a substantial risk that the jurors that were ultimately seated might not fairly and dispassionately evaluate the evidence.

The Supreme Court also found that many of the trial court's evidentiary rulings were erroneous and disproportionately impaired the defense of this matter, warranting the Court to explain the contours of the theory of the cumulative-error standard. The Supreme Court found that the nature and quantity of the errors could not "be explained away as harmless." Instead, they "represent real and repeated errors that cumulated so as to unfairly tilt the balance in favor of plaintiffs and deprive defendants of a fair trial," mandating a reversal of the judgment.

Turning to the size of the jury's verdict, the Supreme Court found that "when the magnitude of the verdict is 'historic' or enormous, a careful and searching review by an appellate court is essential to ensure that the parties have been treated justly and that the trial court's view of the verdict is not itself obscured by compassion or sympathy." It further ruled that the trial was so "infected" with error that the verdict was unreliable. Although the Supreme Court did not render an opinion on whether the quantum of damages was by itself reversible error, the opinion requires lower courts to be aware of the potential improper effect of trial error on the size of a large verdict.

In sum, the Supreme Court held that a review of the complete record, including the jury selection process and the size of the verdict, suggests that "defendants were not accorded justice." Accordingly, the Supreme Court reversed the judgment in favor of plaintiffs and remanded the case for re-trial on both liability and damages.

The opinion is significant because it is one of the Supreme Court's few rulings addressing the issue of cumulative error, i.e., how much trial error can be tolerated before a jury's verdict becomes unsustainable. It also is a significant pronouncement on the need to protect the right to a fair trial through proper jury-selection practices. Finally, it admonishes lower courts to be mindful of the effects of errors in emotionally-charged cases. Kevin T. Coughlin, Esq., of Coughlin Duffy LLP took the lead in arguing for appellants.

Should you have any questions or comments regarding this matter, please feel free to contact us.



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