

THE
DOCKET

March 2010

Vol.17, No.2

The Official Publication of the Lake County Bar Association

When Too Much for One is Not Enough for Another:

The importance of questions regarding specific verdict amounts during voir dire

The Illinois Supreme Court has stated that “[t]he purpose of *voir dire* is to assure the selection of an impartial panel of jurors who are free from bias or prejudice.”¹ During the examination, “a suitable inquiry is permissible in order to ascertain whether the

juror has any bias, opinion, or prejudice that would affect or control the fair determination by him of the issues to be tried.”² When looking at these two quotes, one might think it is quite obvious that attorneys should be able to ask prospective jurors about any issue



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in a case that might involve extreme biases, including questions about attitudes toward specific verdict amounts. However, the Illinois Supreme Court has not yet decided whether attorneys can question prospective jurors regarding their attitudes towards large verdicts or specific verdict amounts in personal injury cases. The only clarification provided is that the manner and scope of the *voir dire* examination rests with the discretion of the trial court.³ Accordingly, the standard for questions concerning verdict amounts remains somewhat unsettled.

One perspective regarding personal injury cases is that no question during *voir dire* should mention anything about large verdicts or specific verdict amounts.⁴ No case law exists in Illinois that endorses this viewpoint, so it can be dismissed without much discussion.

Another perspective is that an attorney can ask whether the jurors would be willing to award a large verdict or a substantial sum of money, but cannot ask whether the jurors would be able to award a specific dollar amount.⁵ Advocates of this standard emphasize that it allows the prospective jurors to be questioned about the size of the potential verdict without emphasizing a certain amount of damages. As a result, this position has support, albeit tapered, from a few Illinois cases. For example, in *Kern v. Uregas Service of West Frankfort*, the court held that it was permissible for the trial court to prohibit the plaintiff from inquiring as to whether the prospective jurors could award a combined verdict of \$490,000 or individual verdicts ranging from \$90,000 to \$150,000.⁶ The plaintiffs were able to ask if the jurors had any prejudice against large verdicts, and the court held that was enough to adequately question the jurors on their potential biases.⁷ However, the court acknowledged that the trial court “would [have] allow[ed] questions on specific amounts so long as it was limited to some sum within the range of ad damnum.”⁸ Therefore, it is reasonable to believe that the trial court would have allowed the specific verdict amount questions if the plaintiff would have inquired about an amount that was relevant to the damages of the case at hand.

Then, in *Juarez v. Commonwealth Medical Records*, the court held that the trial court did not err by denying the plaintiff’s request to ask potential jurors whether they would be able to award a \$2 million verdict.⁹ The trial court had discretion in determining what questions to pose to the jury and simply asking whether the potential jurors could award “substantial damages” was not an abuse of that discretion.¹⁰ Nevertheless, the appellate court qualified its answer when it stated, “[f]urthermore, given that the jury returned a verdict in favor of the defendants, any error

committed by the trial court on the issue was harmless.”¹¹ Thus, it is possible the court may have ruled differently had the jury returned a plaintiff’s verdict, but awarded only a minimal amount of damages.

A third viewpoint is that, at a minimum, an attorney can inquire as to whether a prospective juror could award an amount in the “millions of dollars” if the evidence and law support that amount. Supporters of this standard argue that the questions do not include a specific dollar amount, but still allow the plaintiff’s counsel to make a deeper inquiry into the venire-members’ attitudes than by simply asking about a large verdict or a substantial amount of damages. Accordingly, Illinois courts have held “millions of dollars” questions to be acceptable.¹² As the court in *Mack v. Anderson* said, “[t]he damage questions, by the plaintiffs’ counsel and the court, were an attempt to determine whether the jurors would have any trepidation about making a million dollar damage award, not whether they would find in plaintiffs’ favor.”¹³

The standard that has acquired the most support in Illinois allows an attorney to ask whether the prospective jurors would be willing to award a specific amount damages if the evidence and law support that amount. Advocates of this standard argue that asking about a “substantial amount of damages” does not adequately identify biases against large verdicts because different people have different opinions on what entails a substantial amount of damages. Numerous courts in Illinois have agreed and held that questions regarding specific verdict amounts are necessary and appropriate because they help the court identify biases that might compromise the verdict.¹⁴ In addition, no appellate court in Illinois has ever ruled that it was reversible error for a trial court to permit questions regarding specific verdict amounts to be tendered to the venire.

Overall, the current standard in Illinois ranges anywhere from an attorney being able to inquire as to whether jurors would be able to award a substantial amount of damages or a large verdict to an attorney having the ability to inquire as to whether jurors could award a specific damage amount if the evidence and law support such a verdict. Both standards have some support from past Illinois cases, and an appellate court would most likely consider either approach to be acceptable and within a trial court's discretion. Also, while no Illinois court has ever held that prohibiting all questions regarding verdict amounts is an abuse of a trial court's discretion, it is probable that an appellate court would hold that preventing an attorney from asking any questions about verdict amounts is reversible error. As the court in *People v. Lobb* stated, "a failure to permit pertinent inquiries to enable a party to ascertain whether the minds of the jurors are free from bias or prejudice which would constitute a basis of challenge for cause, or which would enable him to exercise his right of peremptory challenge intelligently, may constitute reversible error."¹⁵

Should Illinois Courts Permit Questions Regarding Specific Verdict Amounts?

Two arguments exist as to why asking prospective jurors whether they would be willing to award a specific amount of damages is inappropriate. First, in *Murphy*, the defense attorney claimed that asking whether the prospective jurors could return a verdict for \$300,000 was improper because the question was designed to obtain a pledge.¹⁶ Similarly, in *Kinsley*, the defense attorney argued that asking whether the prospective jurors would have any trouble awarding a verdict in excess of \$2 million if the law and evidence supported it was merely an attempt "to effect an indoctrination of the jury. . ."¹⁷ In other words, the argument is these types of questions either compel the juror to feel obligated to award the amount of damages discussed during the *voir dire* examination or precondition the jurors' minds to award a certain verdict amount instead of allowing the jurors to come up with an amount of compensation on their own.

Neither of these arguments is compelling.

These arguments fail to take into consideration a judge's role during the *voir dire*. Essentially, the judge acts as the jury's gatekeeper; after the attorneys ask the venire various questions, the judge can consider all relevant factors and dismiss any individual for whom the parties have presented a challenge for cause. The court can even excuse a juror for cause on its own motion if it feels a juror is unable to follow the law. It follows that if a prospective juror has a preconceived set limit, above which he could not award an amount of damages regardless of the evidence, that juror will not follow the law and should be dismissed for cause. Accordingly, a judge should know whether or not a person would be able to follow the law and award a certain amount of damages in a personal injury case if the ev-

idence warrants it. Questions to prospective jurors that use the words "large verdict," "substantial amount of damages" or "millions of dollars" are extremely vague and cannot adequately reveal the extent of a person's biases because the words can have different meanings to different people. Does a large verdict mean \$100,000? \$1 million? More than \$10 million? Simply because a person could award what he considers to be a substantial or large verdict, a verdict of \$500,000, might not mean that person would be impartial when the evidence warrants a verdict of \$5 million. Also, a person might feel an award of \$2 million constitutes an award in the "millions of dollars," even though the evidence warrants an award of over \$10 million. Questions about specific verdict amounts provide the trial court with the necessary information to determine which jurors will not follow the law, and therefore, which jurors should be dismissed for cause.

Similarly, the arguments ignore the judge's discretion in conducting the *voir dire* examination. "The scope of the *voir dire* examination rests within the discretion of the court and is subject to reasonable limitation."¹⁸ The judge has discretion in making sure the plaintiff's attorney is not asking questions in order to unreasonably remove prospective jurors from the jury or indoctrinate the jurors to award an excessively large amount. To prevent those things from happening, the judge can sustain an objection to any question that is not properly formed or asked and instruct the jury to disregard the question. If the plaintiff's attorney asks the venire members whether they can award an amount in excess of \$20 million when the damages of the case may only warrant an award of \$1 million, as illustrated in *Kern*, the judge can put an end to the improper line of questioning.¹⁹ The trial court is in the best position to determine, based on the facts of the case and the present situation in the courtroom, whether a particular set of questions is needed to ascertain a juror's ability to be impartial or whether an attorney is unreasonably questioning the venire. An outright ban on the use of specific verdict questions would undermine the trial court's discretion in conducting the *voir dire* examination as it feels is necessary.

The arguments also fail to acknowledge that similar types of examination questions are posed to prospective jury members in other types of cases where extreme biases may exist. In death-penalty cases, attorneys can inquire as to the venire members' feelings regarding the death penalty even though the questions place a certain end result in the jurors' minds.²⁰ Additionally, many would agree that a prospective juror in a criminal case is biased and should not be on a jury if he would find any person associated with a gang guilty of a crime, regardless of the evidence. Accordingly, attorneys are allowed to inquire about a juror's attitudes toward gangs if gang activity is an integral part of a trial.²¹ Likewise, in a civil case, a prospective juror who has a con-

nection to an insurance company that might be held accountable for the damages cannot be considered impartial and should not be on the jury. Consequently, attorneys are allowed to inquire as to prospective jurors' "or their relatives' possible connection with, or interest in, liability insurance companies. . . even though such inquiries may develop a suspicion in the minds of the jury that [the] defendant is protected by insurance."²² In each situation, attorneys are allowed to inquire as to whether the prospective jurors have certain biases that would prohibit them from reaching a verdict if the evidence warranted it, despite the fact the questions might place certain thoughts in the jurors' minds.

The amount of damages in a personal injury case is no different. Like gang affiliation in a criminal case or insurance coverage in a civil suit, the amount of damages in a personal injury suit is a pivotal aspect of the case and often elicits strong biases. Accordingly, specific verdict questions must be utilized to sufficiently identify those biases that would cause a juror to be completely unwilling to reach a certain verdict; otherwise, the entire trial process is compromised. While it is true the questions might put certain thoughts in the jurors' minds, as was discussed in *Haymes*, simply because a question may invoke suspicions in a juror's mind does not mean the question should be forbidden if it would discover potential prejudices or biases that could jeopardize the verdict's validity.

In addition, the arguments overlook each side's ability to question the venire. Both parties are able to inquire during *voir dire* as to the venire members' attitudes and potential biases.²³ As a result, any advantage one side gains through questioning the prospective jurors is offset by the opposing side's ability to question those same jurors. For example, if the plaintiff's attorney asks whether the jurors would be willing to sign a verdict of \$3 million if the law and evidence warrant that amount, the defense counsel could counter the plaintiff's question by asking whether the prospective jurors would be willing to sign a verdict that is for the plaintiff, but significantly less than the amount of damages the plaintiff sought. Defense counsel can also appropriately question the venire by asking similar questions with a different, lower dollar amount, say \$50,000, or no money at all, for those same damages. Accordingly, the opportunity for both sides to participate in *voir dire* significantly weakens any effect a specific verdict amount question might have on a jury. The prospective jurors will not feel obliged or be indoctrinated to award one amount over another.

Most significant of all is the fact that courts have continually allowed attorneys to ask prospective jurors specific verdict amount questions during *voir dire*. The majority of Illinois courts in cases with specific verdict amount questions have said that the questions are necessary because they allow the court to

determine if the prospective jurors have fixed opinions that might indicate prejudice or bias against large verdicts.²⁴ If the majority of courts have been able to balance the competing fairness and bias principles for specific verdict amount questions for over forty years and nothing in the court system has changed that would warrant a departure from previous rulings, why should courts now decide to overrule their prior decisions?

Conclusion

- 1) A trial court has discretion when conducting the *voir dire* examination, and its discretion regarding the questions directed to the prospective jurors will not be disturbed absent a clear abuse of that discretion.
- 2) The law in Illinois is certainly not a prohibition of all questions concerning large

verdicts or specific verdict amounts. A ruling to this effect would most likely constitute reversible error.

- 3) Illinois case law supports the proposition that, at a minimum, an attorney can inquire as to whether a prospective juror could award a "large verdict" or a "substantial amount of damages" if the facts and evidence supports such an award.
- 4) Illinois courts have allowed attorneys to inquire as to whether the venire members could award "millions of dollars" in damages, provided the damages bear a resemblance to that amount.
- 5) The best approach and the approach that the majority of reported Illinois cases supports is that questions regarding specific verdict amounts are acceptable so

long as the amount is reasonable for the damages of the case.

Questions regarding specific verdict amounts should be permitted because they are the court's best method for discovering biases or prejudice against large verdicts that would compromise a trial's legitimacy. Victims of negligence should not be denied full compensation because one juror is biased against large verdicts in personal injury cases.

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¹ *Kingston v. Turner*, 115 Ill. 2d 445, 465 (1987), *People v. Williams*, 164 Ill. 2d 1, 16 (1994).

² *People v. Lobb*, 17 Ill. 2d 287, 300 (1959) quoting *Connors v. United States*, 158 U.S. 408, 413 (1895).

³ *Williams*, 164 Ill. 2d at 16.

⁴ See *Chavin v. Cope*, 243 A.2d 694, 697 (Del. 1968).

⁵ See e.g., *Dehn v. Otter Tail Power Co.*, 251 N.W.2d 404, 415 (N.D. 1977).

⁶ *Kern v. Uregas Serv. of West Frankfort*, 90 Ill. App. 3d 182, 201-202 (5th Dist. 1980).

⁷ *Id.*

⁸ *Id.*

⁹ *Juarez v. Commonwealth Med. Records*, 318 Ill. App. 3d 380 (1st Dist. 2000).

¹⁰ *Id.*

¹¹ *Id.*

¹² See *Mack v. Anderson*, 371 Ill. App. 3d 36, 51 (1st Dist. 2006), appeal denied 223 Ill. 2d 637 (2007); see generally *Ex parte Krupp Oil Co.*, 727 So. 2d 85, 86-87 (Ala. 1998); *York v. El-Ganzouri*, 353 Ill. App. 3d 1, 8, 13-14 (1st Dist. 2004).

¹³ *Mack*, 371 Ill. App. 3d at 51.

¹⁴ See e.g., *DeYoung v. Alpha Constr. Co.*, 186 Ill. App. 3d 758, 764-765 (1st Dist. 1989); *Kinsey v. Kolber*, 103 Ill. App. 3d 933, 946-947 (1st Dist. 1982); *Scully v. Otis Elevator Co.*, 2 Ill. App. 3d 185, 197-198 (1st Dist. 1971); *Murphy v. Lindahl*, 24 Ill. App. 2d 461, 470-471 (1st Dist. 1960); see also e.g., *Snyder v. General Elec. Co.*, 287 P.2d 108, 111-112 (Wash. 1955); *Gragg v. Neurological Assocs.*, 336 S.E.2d 608, 609-610 (Ga. Ct. App. 1985); *Rankin v. Blue Grass Boys Ranch, Inc.*, 469 S.W.2d 767, 772-773 (Ky. Ct. App. 1971); See generally *Bulkmatic Transport Co. v. Taylor*, 860 So. 2d 436, 439-440 (Fla. Ct. App. 1st Dist. 2003).

¹⁵ *Lobb*, 17 Ill. 2d at 300.

¹⁶ *Murphy*, 24 Ill. App. 2d at 470-471; see also *Chambers v. Bradley County*, 384 S.W.2d 43, 44 (Tenn. Ct. App. 1964).

¹⁷ *Kinsley*, 103 Ill. App. 3d at 946-947; See also *DeYoung*, 186 Ill. App. 3d at 764-765; *Scully*, 2 Ill. App. 3d at 198.

¹⁸ *Lobb*, 17 Ill. 2d at 300.

¹⁹ *Kern*, 90 Ill. App. 3d at 201-202.

²⁰ See *People v. Williams*, 193 Ill. 2d 306, 335-336 (2000).

²¹ *People v. Strain*, 194 Ill. 2d 467, 477 (2000).

²² *Haymes v. Catholic Bishop of Chi.*, 41 Ill. 2d 336, 341 (1968) quoting *Moor v. Edmonds*, 384 Ill. 535, 541 (1943).

²³ Ill. R. Civ. P. 234.

²⁴ See e.g., *DeYoung*, 186 Ill. App. 3d at 764-765; *Kinsley*, 103 Ill. App. 3d at 946-947; *Scully*, 2 Ill. App. 3d at 198; *Murphy*, 24 Ill. App. 2d at 470.