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Picking through a beef stew verdict form

When I was a child, my Grandma Lottie would make a beef stew. Quite candidly, the “beef” was awesome. The potatoes were not that bad either. The rest of the “stew,” not exactly delectable to a preteen.

Heck, vegetables are like kryptonite to a kid. I would carefully sift through the stew to locate the beef and potatoes, often leaving a bowl that looked relatively clean. At the precise moment Grandma Lottie turned her back, I would dispose of the undigested evidence — napkin, toilet — whatever it took to rid myself of eating vegetables. In my underdeveloped mind, the identification and selection of the beef and potatoes was tantamount to me surviving.

I have had the good fortune of taking cases to verdict for more than 27 years. Over those years I have sought itemized verdict forms. For 27 years, I have often had defense attorneys objecting to the separation of elements for past and future damages.

Candidly, the opposition to the separated verdict form never made sense to me. I guess reflecting back on my childhood, I always believed separation benefited all parties involved.

Like eating beef stew, I left the table satisfied, and Grandma Lottie saw a “clean” bowl.

Recently, the 1st District Appellate Court confirmed my thoughts on separate elements of damage in *Jefferson v. Mercy Hos-*

pital and Medical Center, 2018 IL App. (1st) 162219. There, a jury returned an award for numerous elements of damages, including \$2.5 million for disfigurement of the plaintiff.

The plaintiff had tendered a separate jury instruction with separate line items for past and future disfigurement. The court sustained the defendant's objection to the plaintiff's tendered instruction.

On the evening following closing arguments and after the case had been submitted to the jury, the plaintiff passed away.

On appeal, among other areas, the defendant challenged the amount of the \$2.5 million for disfigurement. As the defense had previously opposed separate line items for past and future disfigurement, the appellate court acknowledged “[it] leaves us with no way to know what portion of the \$2.5 million award, if any, was attributable to future disfigurement.”

The plaintiff had tendered a separate jury instruction with separate line items for past and future disfigurement.

The court further recognized “[defendant's] insistence that the jury award on this element of damages be rendered in a single sum cannot serve as a basis for a new trial. There is no way to determine whether any portion of the award for disfigurement went towards future damages.”

BALANCING LIFE AND THE LAW



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Therefore, the defendant's request for a remittitur was denied.

Similarly, in *Marchese v. Vincelette*, 261 Ill. App. 3d 520 (1st Dist. 1994), the defendant contended the damage award was excessive and solely the result of passion and prejudice. There, the 1st District Appellate Court was unable to analyze the

breakdown of the jury's award, as neither party tendered an itemized verdict form as required by Section 2-1109 of the Code of Civil Procedure.

The *Marchese* court went on to note “[b]ecause it is impossible to determine accurately the jury's distribution of the economic and

noneconomic damages, we cannot determine if the award was excessive.”

Some 40 years ago, defendants were making the same argument that an itemized verdict form would be prejudicial to its case. In *Doering v. Janssen*, 76 Ill. App. 3d 62 (3d. Dist. 1979), the 3rd District Appellate Court disagreed with the defendant and cited to what has since become Section 2-1109.

The *Doering* court noted the legislative intent was to require jurors to carefully consider the purpose for which each dollar of damages were awarded.

In fact, the *Doering* court noted “[t]o agree with the defendant would be to frustrate the general policy direction which the legislature has charted while adhering mechanistically to the minimal requirements of [2-1109]. We choose not to adopt that error to submit a verdict form which itemized numerous elements of damages.”

Having an itemized verdict is not only the law and codified by statute, but it protects all parties involved at trial. Separation of damage elements assists the trial court and any reviewing courts on potential missteps made by a jury.

Without this safeguard in place, how does anyone adequately protect a client on whether an element is excessive or inadequate?

Like the dissection of the beef stew, itemizing a verdict is a win-win for all involved.