In "Case" You Missed It: Orientale v. Jennings

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In *Orientale v. Jennings*, 239 N.J. 569 (2019), the Supreme Court reconsidered the practices of additur and remittitur. In that case, the plaintiff brought a personal injury suit against the defendant for injuries stemming from a car accident. The plaintiff ultimately settled with the defendant for $100,000, the full amount of insurance coverage on the defendant's vehicle, and then initiated a claim against her insurer for her personal injury damages in excess of $100,000 caused by the accident.

The matter proceeded to a jury trial on damages. The jury found that the plaintiff suffered permanent injuries, but awarded damages of only $200. The plaintiff then moved for a new damages trial or an additur. Under the current scheme for additur, if a jury's damages award is so grossly inadequate that it shocks the judicial conscience, the trial judge may, with the defendant's consent, grant an additur equal to the lowest award that that the judge believes can be sustained by the evidence. If the defendant accepts that amount, the plaintiff cannot challenge the award with the trial court, but instead must appeal. The same is true – though the roles of the parties are reversed – with regard to remittitur, which allows a trial judge to cure a grossly excessive jury award by granting a remittitur equal to the highest award the judge believes could be sustained by the evidence. Pursuant to that scheme, the trial judge granted an additur of $47,500, the lowest award in his estimation that a jury could have returned in light of the evidence presented at trial.

The case ultimately made its way to the Supreme Court, which took the opportunity to examine the current scheme for additur/remittitur and determined that the system as currently constituted was inequitable. The Court determined that "[t]he heart of the problem is lack of mutual consent to the judge's assessment of the proper quantum of damages. The wronged party gets the short end of the stick." Essentially, the party entitled to a new trial is denied a new trial if the other party accepts the court's remitted or increased amount." The Court thus fashioned a new system. Now, "when a damages award is deemed a miscarriage of justice requiring the grant of a new trial, then the acceptance of a damages award fixed by the judge must be based on the mutual consent of the parties." If either party does not consent, "the court must grant a new trial." Relatedly, the Court also altered the way in which the trial judge is to calculate the amount of the additur or remittitur. Judges now are to "attempt the difficult task of determining the amount that a reasonable jury, properly instructed, would have awarded." The Court further explained that "[u]nder this new scheme, we recognize that a remittitur and an additur are essentially settlement figures suggested by the trial court. For this approach to work effectively, the trial court must calculate a remittitur or additur in a way that maximizes the potential that the parties can reach a mutually acceptable settlement."

Ultimately, the Court's reformation of the rules of additur and remittitur may be less of a monumental shift in the scheme and more of a streamlining of the process. The party that received an inequitable award no longer must accept the additur/remittitur and take an appeal before being granted a new trial. Rather, instead of having to convince an appellate court to grant a new trial, the non-accepting party can simply decline the judge's additur/remittitur – which is now essentially a settlement offer – and move forward with a new trial on damages.