



Victory through the verdict form

Attention to a verdict form can save you aggravation and prevent the unraveling of your case.



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A trial can be quickly undone by a faulty verdict form. This is especially true for plaintiffs, who face catastrophe at each special verdict question.

Creating the verdict form

Your verdict form works in concert with the jury instructions, so it makes sense to write them together. In many cases, instruction choices will shape the verdict form, particularly when special instructions come into play. The verdict form and jury instructions should therefore be compiled as far in advance of trial as possible. The instructions must be submitted before the witness is sworn, and local rules usually require even earlier submission, so you might as well get the verdict form done at the same time. (Code Civ. Proc., § 607A.)

There is also an advantage to reaching an early agreement with opposing counsel about the verdict form, or seeking a court ruling on the subject if no agreement is possible. If you have a final verdict form completed and approved, you can walk the jury through the verdict form during closing argument. Just as voters facing the countless initiatives on the California ballot (does “yes” mean I’m for it, or against it?), jurors could use some help parsing the language.

General vs. Special verdict form

A general verdict has plenty of advantages for plaintiffs: it can eliminate set-offs and contributory

fault; it can provide tax advantages for the winning plaintiff; and on appeal the court must assume that the jury found in favor of the prevailing party on all material issues. (*Thomson v. Casaudoumecq* (1962) 205 Cal.App.2d 549, 555 [“if the evidence supports implied findings on any set of issues which will sustain the verdict it will be assumed the jury so found....”].) However, you have to be very lucky to encounter a defense attorney who is asleep enough to accept a general verdict form. One of the attorneys at our office has seen it happen – but that was once in a very lengthy career.

The importance of clarity

The most important characteristic of a verdict form is that it be clear and comprehensible. Devising a flowchart will help you visualize the form’s logical structure, especially if you list the related jury instructions at every step on the chart. Ask other people to read over your chart and proposed form, and simplify anything your readers find confusing.

The Judicial Council is a good place to start and its Civil Jury Instructions Resource Center at <http://www.courtinfo.ca.gov/jury/civiljuryinstructions/> provides a lot of helpful information. You can find a link to the Judicial Council’s jury instructions on its Web site at <http://www.courtinfo.ca.gov/jury/civiljuryinstructions/documents/caci.pdf>. You can also try using language taken from the jury instructions. After all, the CACI instructions are designed to “accurately state the law in a way that is understandable to the average juror,” and their use is “strongly encour-



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aged.” (Cal.Rules of Court, rule 2.11050(a), (e).) Opposing counsel will also have a hard time objecting to such language.

Ambiguous verdicts

If the jury returns a conflicting or incomplete verdict, do your best to convince the judge to send the jury back into deliberations to clarify its verdict. If you don't, you are taking a risk: failure to object to a verdict that is “merely ambiguous” (as opposed to outright contradictory) may amount to waiver of the defect, “particularly if the party’s failure to object was to reap ‘technical advantage’....” (*Zigami, Inc. v. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092 ft. 5.)

In *Mizel v. City of Santa Monica* (2001) 93 Cal.App.4th 1059, 1068-1069, the jury’s response to one question suggested defendants had no liability, while further responses suggested otherwise. (The judge explained the inconsistency to the jury and asked them either to compose a question to the court, if they needed further instruction, or to revise their answers to better reflect their con-

clusions. (*Id.* at 1069-1070.) Although defendants objected, the appellate court found that the judge had acted properly. (*Id.* at 1072-1073.)

Judges who have not encountered an ambiguous verdict before may not be aware that they can reinstruct the jury or ask the jury to correct its verdict. You should point out that judges are explicitly given this power by Code of Civil Procedure section 619, and “[a]n ambiguous or inconsistent finding or verdict presents a problem for a trial judge demanding immediate solution.” (*Hathaway v. Spiro* (1985) 164 Cal.App.3d 359, 367.)

If the judge excuses the jury before the confusion is sorted out, your case could become a lot more expensive: inconsistent verdicts are good cause for a new trial. (*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 682; see also *Zigami Inc., supra*, 160 Cal.App.4th at 1086-1087, where a new trial was ordered when a special verdict was “hopelessly ambiguous,” even though neither party objected before the jury was discharged.)

Conclusion

By taking the time to carefully prepare a special verdict form, you will be able to prevent the jury from becoming confused as well as prevent any undecipherable verdicts.

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