

Getting (or Opposing) an Increase in Jury-Awarded Damages on Appeal in Federal Court

July 14, 2020

If you're involved in a jury trial federal case where damages are being sought, what do you do if the jury has awarded damages and either (a) you want to increase damages on appeal, because you represent the winning party, or (b) you want to oppose the other side's attempt to increase the damages on appeal?

An appellate court does not have the authority to increase damages on appeal simply because a party has appealed that issue. If a jury has awarded damages, an increase on appeal is foreclosed by the U.S. Constitution's Seventh Amendment Reexamination Clause: "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

There are at least six ways to place the matter properly before the appellate court.

1. Federal Rule of Civil Procedure 50(a).

A party can move for a judgment as a matter of law under FRCP 50(a), but this must be done before the presentation of the matter to the jury. In some state courts, this is called a directed verdict motion.

An FRCP 50(a) motion must be done at the close of all the evidence. The basic argument is that there is no valid dispute on the amount of damages and that this issue should not go to the jury at all.

2. Federal Rule of Civil Procedure 50(b).

If a FRCP 50(a) motion has been made and denied, a party can renew the motion for judgment as a matter of law under FRCP 50(b). If the FRCP 50(b) motion is timely made, the district court has three options: (1) let the jury verdict stand; (2) order a new trial, or (3) enter the judgment on the increased damage amount.

3. Federal Rule of Civil Procedure 59(e).

A party can file a Rule 59(e) motion for a new trial even if the party has not filed a Rule 50(a) and (b) motion.

4. Federal Rule of Civil Procedure 58.

If there is an alleged inconsistency in the jury's findings and an earlier ruling of the trial court, such as a summary judgment ruling, a party can request a "separate document" for the judgment under Rule 58. In the words of

one court, a Rule 58 motion “ensures that a district court ‘specif[ies] what matters: the consequence of the judicial ruling.’”

5. Federal Rule of Civil Procedure 59(e).

Within 28 days of the final judgment, a party can file a motion to alter or amend the judgment under Rule 59(e); that motion gives the trial court a chance to correct any mistakes in its judgment.

6. Federal Rule of Civil Procedure 60(b).

If an incorrect final judgment has been entered and it is too late to file a Rule 59(e), a party can still file a Rule 60(b) motion for relief based on “mistake, inadvertence, surprise, or excusable neglect.” In the words of one court, a mistake under Rule 60(b) includes judicial errors, but “such an error must be a ‘fundamental misconception of the law,’ and not merely an erroneous ruling.”

A denial of a Rule 60(b) motion is an appealable order. Some Circuit courts, including the U.S. Fifth, have even allowed parties to file a Rule 60(b) motion during the pendency of an appeal.

The U.S. Fifth Circuit has recently had occasion to visit these issues in a situation where the winning party sought an increase in damages on appeal but had not followed any of the six steps outlined above. The Fifth Circuit refused to grant the party any relief.

The case is *Acadian Diagnostic Laboratories, L.L.C. v. Quality Toxicology, L.L.C.*, No. 19-30320 (5th Cir. 7/13/20).

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