JUDGES SHOULD AFFIRM DAMAGE AWARDS THAT THEY CONSIDER TO BE UNREASONABLE

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The Courts have repeatedly stated, but plaintiff-side lawyers have been slow to understand--Judges must affirm damage awards that they believe are unreasonable, as long as they are not grossly so. In other words, a Judge must defer to a jury's calculation of damages, even if the Judge considers the award to be merely unreasonable.

If an award is to be remitted or new trial ordered for excessive damages, "it must be in a case where the damages are monstrous and enormous indeed, and such as all mankind will be ready to exclaim against at first blush." Coffin v. Coffin, 4 Mass. 1, 42 (1808). The award must be "obviously" unreasonable. Langevine v. District of Columbia, 106 F.3d 1018, 1024 (D.C. 1997). It is only when an award is "greatly disproportionate to the injuries," and not merely

disproportionate, that remittitur becomes a possibility. Reckis v. Johnson & Johnson, 471 Mass. 272, 299 (2015), cert. petition filed October 2015. This standard was properly applied in 2015, when the Supreme Judicial Court refused to remit a $50,000,000 award in a product liability case. Reckis, 471 Mass. at 298-299.

What is to become of awards that the judge believes to be merely disproportionate to the injury, but not "greatly" disproportionate? What of awards that are probably unreasonable, but not so glaring that all of mankind would immediately agree? Those awards must be affirmed.

As will be shown below, plaintiff-side lawyers must stress that the remittitur/new trial standard for excessive damages is not a reasonableness standard. Judicial deference to juries requires that some awards be upheld, even if a judge believes that the award is merely unreasonable.

I. DEFERENCE TO THE JURY

An examination of the high standard for remittitur begins with the bedrock of deference that must be accorded to jury determinations. Article 15 of the Declaration of Rights establishes that the fact finding functions of the jury are "sacred." Therefore, the purpose behind the "obviously unreasonable" or "greatly disproportionate" standard is not to encourage unreasonable awards – it is simply a reflection of the constitutional reality that a jury's assessment takes precedence over the opinion of the judge.

It is a fundamental principle of law that a carefully instructed and properly informed jury makes the often-challenging calculations inherent in damage awards. Dalis v. Buyer Advertising, 418 Mass. 220, 224 (1994). "[I]t is the jury's function to make the difficult and uniquely human judgments that defy codification and that build discretion, equity, and flexibility into a legal system." Aleo v. SLB Toys USA, Inc., 467 Mass. 398, 413 (2013), quoting McCleskey v. Kemp, 481 U.S. 279, 311 (1987). The review of a jury verdict must "proceed with great deference for the jury's assessment." Segal v. Gilbert Color Systems, Inc., 746 F.2d 78, 81 (1st Cir. 1984); Smith v. Kmart Corp., 177 F.3d 19, 30 (1st Cir. 1999) (high remittitur standard reflects "deference owed to the jury award").

The jury's zone of discretion is never greater than when assessing awards, such as for physical pain, emotional distress, front pay, loss of capacity and punitive damages, for which there are few objective criteria to translate harm into dollars. Labonte v. Hutchins & Wheeler, 424 Mass. 813, 825 (1997); Correa v. Hosp. San Francisco, 69 F.3d 1184, 1198 (1st Cir. 1995) ("converting feelings such as pain, suffering, and mental anguish into dollars is not an exact science"); Mercado-Berrios v. Cancel-Alegria, 611 F.3d 18, 29 (1st Cir. 2010).

With respect to these awards that lack a tangible "yardstick," it is not enough to acknowledge that reasonable minds "may" differ. Instead, it is a fact that reasonable minds will differ. Unless an extraordinary coincidence occurs, a juror's view of what is reasonable will differ from that of a judge.

In order to protect the discretion of the jury, the SJC has stated:

> [T]o enable the Court to draw this conclusion, it is not enough, that in their opinion the damages are too high, or that much less damages would have been a sufficient satisfaction to the plaintiff; for the law has not intrusted the Court with a discretion to estimate the damages, but **has devolved the power on a jury,** as a matter of sentiment and feeling, **to be exercised by them according to their sound discretion**, duly weighing all the circumstances of the case, and considering the state, degree, quality, trade, or profession, as well of the party injured, as of him who did the injury. **Judges, therefore, should be very cautious how they overthrow verdicts, given by twelve [people] on their oaths, on the ground of excessive damages**.

Coffin, 4 Mass. at 41-42 (emphasis added). In other words, there must be a recognition that it is for the jury, and not the judge, to exercise "discretion" to determine the proper amount of damages.[1] Consequently, as will be shown, review of the jury's decision approaches the "abuse of discretion" standard.

II. REMITTITUR REQUIRES A FINDING OF A 'BROKEN' JURY

Rule 59(a) of the Massachusetts Rules of Evidence permits judicial interference with jury awards considered to be "excessive," and in such instances, permits the judge to order remittitur or grant a new trial. While the "excessive" test may seem simple and straight-forward, it is neither. The "excessive" test requires, as a necessary predicate, a finding that the jury process was broken.

Properly understood, the large size of a verdict, by itself is not the focus of the remittitur inquiry. Rather, a large award is only relevant to the extent that it

[1] "Only infrequently – and then, for compelling reasons – will we from the vantage point of an algid appellate record, override the jury's judgment as to the appropriate amount of non-economic damages to which a plaintiff is entitled." Monteagudo v. Asociacion de Empleados Del Estado Libre Asociado de Puerto Rico, 554 F.3d 164, 174 (1st Cir. 2009).

supports the ultimate conclusion that the jury was biased or corrupt. Smith & Zobel, 7 Mass. Practice, § 59.4.

> [T]he size of the verdict alone does not determine whether it is excessive. The only practical test to apply to this verdict is whether the award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption.

Labonte, 424 Mass. at 824-825 & n.16, quoting Mather v. Griffin Hosp., 207 Conn. 125, 139, 540 A.2d 666 (1988).[2]

In other words, damages are excessive when they are "so great . . . that it may be reasonably presumed that the jury, in assessing them, did not exercise a sound discretion, but were influenced by passion, partiality, prejudice or corruption." Reckis, 471 Mass. at 299, quoting Bartley v. Phillips, 317 Mass. 35, 41 (1944). It is the longstanding rule that "verdicts may be set aside for excessive damages, when their magnitude manifestly shows the jury to have been actuated by passion, partiality, or prejudice." Coffin, 4 Mass. at 42-43; Barry v. Edmunds, 116 U.S. 550, 565 (1886).

If the standard is properly applied, remittitur/new trial on the basis of excessive damages reflects either an explicit or implicit finding that the jury, a collective body of twelve people, were corrupt, biased or all took leave of their rational senses at the same moment. Given that this is the ultimate finding at

[2] "The size of a verdict alone will not determine whether it is excessive." Zacarelli v. Am. Med. Rsponse of Mass., Inc., 2015 Mass. Super. Lexis 71, 5

issue, it makes sense that a single judge's view that the award was merely unreasonable is insufficient to grant a new trial.

III. MERELY UNREASONABLE AWARDS MUST BE UPHELD

1. The First Onion Peel—More Than the Judge Would Have Awarded

Assume that an award of $1,000,000 in emotional distress is handed down. The first question is, should the award be cut if the award is greater than the amount that the judge herself would have awarded had she been a juror?

The answer to that question is a clear "no." A damage award should not be disturbed even if it is "extremely generous," or because the Court believes that the damages should have been awarded in lower amounts. Bartley, 317 Mass. at 40; Serrano Munoz v. Sociedad Espanola de Auxilio Mutuo Y Beneficiencia de Puerto Rico, 671 F.3d 49, 61-62 (1st Cir. 2012). A judge has no right to set aside a verdict merely because she would have assessed the damages in a different amount. Solimene v. B. Grauel & Co., 399 Mass. 790, 803 (1987). Simple disagreement with the size of a verdict does not alone actuate the court's power to undermine a jury's award of damages. Smith & Zobel, 7 Mass. Practice, § 59.4. Thus, the fact that an award is high—higher than the judge would have awarded--does not mean that it is subject to culling.

2. The Second Onion Peel—Possibility of Overcompensating the Plaintiff

The next question is, should the award be cut if the award might overcompensate the plaintiff?" The answer is also a clear "no." An award must

be upheld even if it may have overcompensated the plaintiff. Serrano Munoz, 671 F.3d at 62. The "may" is the operative word, and reflects the reality that some losses and injuries do not have specific, demonstrable basis, and the amount necessary to compensate is not an objectively determinable number. An award may be set aside only when the court is "certain" that it is excessive. Romano v. U-Haul Int'l, 233 F.3d 655, 672 (1st Cir. 2000). Consequently, if an award "may" be too high, it must be affirmed. Id.

3. The Third Onion Peel--Disproportionality

Moving to the next level, the question becomes, "should the award be cut if it is disproportionate to the injury?" Again, the answer is "no." Mere disproportionality of the award to the injury is insufficient to justify tampering with the jury's verdict. Rather, the issue for the trial judge is whether the award is "greatly disproportionate to the injuries proved." Commonwealth v. Johnson Insulation, 425 Mass. 650, 668 (1997); Reckis, 471 Mass. at 466; Bartley, 317 Mass. at 42.

This is a "disproportion plus" standard. Mere disproportionality, or even a moderate level of discrepancy or inequity is not enough. Griffin v. General Motors Corp., 380 Mass. 362, 371 (affirming award despite disproportion between $30,000 in special damages (involving medical bills and wage loss) and a $1,000,000 general verdict). Again, the judge's role is not strictly to police awards that the judge considers too high. Rather, the judge's authority emerges only when the award is so "greatly disproportionate" that the award itself becomes

evidence of bias, misconduct or corruption of the process. Smith & Zobel, 7 Mass. Practice, § 59.4; Loschi v. Massachusetts Port Authority, 361 Mass. 714, 715 (1972) ("greatly disproportionate").

Likewise, the award is not scrutinized for mere or moderate, or even substantial excessiveness. Rather, the award may be rejected only when found to be "palpably and grossly . . . excessive." Dimick v. Schiedt, 293 U.S. 474, 486 (1935); Correa, 69 F.3d at 1197; Mercado-Berrios, 611 F.3d at 28.[3] The modifiers of "palpably," "greatly" or "grossly" means that the judge's view of a proper high mark for damages is not the controlling standard. The award must substantially exceed even the high limit contemplated to be proper by the judge, before she can reject the jury's determination based on the finding of a broken jury.

4. The Fourth Onion Peel – Shocking to the Conscience

Another consideration is whether the size of the award "shocks the conscience," or "shocks the sense of justice." Labonte, 424 Mass. at 825; Correa, 69 F.3d at 1197; Langevine, 106 F.3d at 1024. Even this standard requires more than mere unreasonableness. According to the Supreme Court, the "shock to the conscience" standard requires more than a "material deviation from reasonableness." Gasperini v. Ctr. for Humanities, 518 U.S. 415, 422-425 (1996).

[3] Similarly, the standard for determining if an award exceeds constitutional bounds is whether it is "grossly excessive." Aleo, 466 Mass. 414; Kiely v. Teradyne, Inc., 85 Mass. App. 431, 435 (2014); State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 417 (2003); BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 568 (1996). A "merely" excessive award must stand, in the absence of conviction that the error is absolutely manifest and obvious.

Therefore, a materially unreasonable award, alone, does not rise to the level that triggers a Rule 59(a) remedy.

5. The Fifth Onion Peel--Unreasonableness

Mere unreasonableness in the verdict does not warrant remittitur or new trial. Rather, binding precedent requires that the verdict must be so unreasonable "that all of mankind at first blush must think so, to induce the court to grant a new trial for excessive damages." Coffin, 4 Mass. at 42.

The jury is accorded deference by the judge. Smith & Zobel, 7 Mass. Practice, § 59.4. Indeed, "[r]espect for the integrity of the jury system" requires that judges eschew an activist approach in addressing jury awards. Id. And if it is true that juries are granted deference by judges, that area of deference to the jury only truly exists above what the judge considers a reasonable limit. If a Judge cuts an award at the precise amount of the boundary of what she considers to be a reasonable award, then she has improperly accorded no deference to the jury. Deference to a jury in this context only exists when a judge permits an award above what she considers reasonable.[4]

Thus, a full expression of the relevant test is as follows:

> the magnitude of the damages must be such that the court can manifestly see that the jury have been outrageous in giving such damages as greatly exceeded the injury. A verdict must be set aside for excessive damages, if they are such as are unreasonable and outrageous, and which all mankind might at first blush see to be unreasonable. And it must be a glaring case,

[4] The boundary of reasonableness is not a bright line. It is a gray area. That is established above, in the Serrano Munoz case, which recognized the situation where an award "may" overcompensate a Plaintiff. 671 F.3d at 62.

> indeed, of outrageous damages in a tort, and which all mankind at first blush must think so, to induce the court to grant a new trial for excessive damages.

Coffin, 4 Mass. at 42.

In other words, the award must be greater than what the Judge might consider to be "unreasonable" to be excessive – it must be beyond all reason, outrageous, or obviously unreasonable.

> Defendants' new trial motion was also based on the claim that the jury's verdict was excessive. Verdicts may be labeled excessive, however, only when they are "beyond all reason" or "so great as to shock the conscience." . . . Therefore, a jury's determination of damages may only be disturbed if it "**is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate**."

Langevine, 106 F.3d at 1024 (emphasis added, internal citations omitted). Consequently, an unreasonable verdict, standing alone, does not trigger a judge's Rule 59(a) discretion.

III. EVIDENCE THAT THAT JURY IS RATIONAL, AND THAT THE JURY PROCESS IS NOT BROKEN

Judicial discretion to order a new trial or remittitur based on excessive damages applies only when there has been a determination that the jury process is broken. Consequently, it behooves the winning plaintiff to establish a record which highlights the rationality of the jury and the care it has taken in their final determination. Such a record may include:

* The oaths taken by the jury;[5]

[5] Coffin, 4 Mass. at 42.

* The fairness of the voir dire process, including whether the Judge adopted some of the defendant's proposed voir dire questions;

* Jury instructions which require jurors to use reason and calm discretion, and to eschew reliance on bias, sympathy or dislike;

* The sometimes large size of the jury, which may be composed of up to 12, 13 or even 14 individuals;

* Whether the verdict is unanimous;

* Whether the jurors were punctual and otherwise demonstrated that they took their job seriously;

* The rationality and relevance of the questions asked by the jury during the trial and during deliberations;

* The evident attentiveness and professionalism of the jury during the trial, as often evidenced by the comments of the judge at the end of the case, or the defendant during closing arguments;

* Whether the judge issued curative instructions with respect to inappropriately inflammatory information presented at trial;

* The temporal length of jury deliberations, which sometimes may extend over a weekend;

* Whether the award appears to be the product of specific calculations;

* Whether the verdict is somehow divided, showing that there is no one-sided bias in favor of the plaintiff;

* Whether the award falls within the range supported by an expert witness.[6]

* Whether the award falls within the range of other civil penalties, or the amounts awarded in similar cases.[7] On the other hand, the

[6] Haddad v. Wal-Mart Stores, Inc., 455 Mass. 91, 104 (2009) (award of front pay was on the lower end of the estimates of front pay provided by the plaintiff's expert witness).

[7] Haddad, 455 Mass. at 104-105 (award of front pay was within the range awarded in other discrimination cases).

Supreme Judicial Court has refused to permit comparator awards to act as dispositive limits.[8]

* Where the verdict form requires a jury to award a single amount for various types of damages, and the jury is not asked to specify an award for each type of damages, the ambiguity created by this situation militates against finding an excessive award. E.g., Reckis, 471 Mass. at 298-9.

* Awards for damages that are difficult to calculate, involving an assessment of intangible factors and non-economic loss, is a matter peculiarly within the jury's ken, and such awards are subject to greater judicial deference.[9]

* Whether the award has some understandable relationship to the extent of perceived harm or the need to punish.[10]

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[8] Labonte, 424 Mass. at 825-826 & n.17; Griffin, 380 Mass. at 371 (comparative verdict analysis "is a dangerous game, to say the least"); see also Harlow v. Chin, 405 Mass. 697, 714 (1989) (attorneys must not reference verdicts in other cases during closing arguments). Simply showing that the damage award was "generous in comparison to other (hand-picked) cases is insufficient to warrant relief." Correa, 69 F.3d at 1198; see Bielunas v. F/V Misty Dawn, Inc., 621 F.3d 72, 82 (1st Cir. 2010). The Court must not disturb an award "merely because the amount . . . is somewhat out of line with other cases of a similar nature." Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 579-580 (1st Cir. 1989).

[9] Smith v. Kmart Corp., 177 F.3d 19, 30 (1st Cir. 1999); Ruiz v. Gonzalez Caraballo, 929 F.2d 31, 34 (1st Cir. 1991); Wagenmann v. Adams, 829 F.2d 196, 215 (1st Cir. 1987).

[10] While the standard is traditionally phrased as "greatly disproportionate to the injury," the standard must be altered with respect to punitive damages, which are designed to punish the defendant and not merely compensate for the injury. Clifton, 445 Mass. at 623 (punitive damages do not purport to relate directly to loss). The extent of injury is but one factor in determining the proper amount of punitive damages, and the punitive amount must be geared to "smart," and take into consideration the financial condition of the defendant. For example, while the "actual harm" experienced by Rosa Parks might be valued as five cents, for bus fare, the deterrence value of punitive damages and the need to punish the discrimination warrants a much higher amount of punitive damages which would bear no direct relationship to the value of a bus ticket. Bain v. Springfield, 424 Mass. 758, 767 (1997) (punitive damages may well be warranted, even if the plaintiff has suffered no actual damages or mitigated them to nothing).

IV. OLDER COMMON LAW IS CONTROLLING[11]

While much of this article is based on the two hundred plus year old precedent of Coffin v. Coffin, 4 Mass. 1, 42 (1808), and the older cases cited therein, such venerable precedent is, in fact, controlling. This standard remains as fresh and binding today as the year it was issued, as the Massachusetts Rules of Civil Procedure enshrines the new trial standards as "have heretofore been granted in actions at law in the courts of the Commonwealth." Mass. R. Civ. P. 59(a).

The Constitutions that govern our courts point us directly to past practice. The Seventh Amendment of the United States Constitution, enacted in 1791, asserts that the findings of a jury may be re-examined only "according to the rules of the common law." U.S. Const. amend. VII.[12] The provision has "adopted the rules of the common law in respect to trial by jury as these rules existed in 1791." Dimick v. Schiedt, 293 U.S. 474, 487 (1935). Likewise, Article 15 of the Massachusetts Declaration of Rights "preserves the common law trial by jury in its indispensable characteristics as established and known at the time the Constitution was adopted in 1780." Department of Revenue v. Jarvenpaa, 404 Mass. 177, 185-186 (1989).

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[11] The writers express profound gratitude to Professor Suja Thomas on her historical examination of the roots of the remittitur and new trial standards. See Suja A. Thomas, *Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment*, 64 OHIO ST. L.J. 731 (2003).

[12] The Seventh Amendment states that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and 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" U.S. CONST. amend. VII.

Congress passed the Judiciary Act of 1789, which accorded the Federal courts "the power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted by the courts of law." Judiciary Act of 1789, § 17, 1 Stat. 83. The Massachusetts Rule of Civil Procedure 59(a) was thereafter adopted, containing almost identical language."[13]

The standards urged by this article are consistent with the ones in place during the relevant Constitutional period.

> "[A] new trial may be had for excessive damages; but in that case, the damages ought not to be weighed in a nice balance, but must be such as appear at first blush to be outrageous, and indicate passion or partiality of the jury."[14]

"[T]here must be some very extraordinary conduct in a jury to induce the Court to meddle with damages." Perkin v. Proctor, 95 Eng. Rep. 874, 877 (1768). "[I]n cases of tort the Court will not interpose on account of the largeness of damages, unless they are so flagrantly excessive as to afford an internal evidence of the prejudice and partiality of the jury." Leith v. Pope, 96 Eng. Rep. 777, 778 (1779). Damages had to be "outrageous" in a tort claim to warrant a new trial, or "so monstrous and excessive, as to be in themselves an evidence of passion or partiality in the jury." Sharpe v. Brice, 96 Eng. Rep. 557, 557 (1774); Fabrigas v. Mostyn, 96 Eng. Rep. 549 (C.P. 1773); see Huckle v. Money, 95 Eng. Rep. 768 (C.P.

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[13] The Federal Rules comprise almost identical language, as well. Fed. R. Civ. P. 59(a).

[14] 2 WILLIAM TIDD, The Practice Of The Courts Of King's Bench, And Common Please, In Personal Actions, And Ejectment: To Which Are Added, The Law And Practice Of Extents; And The Rules Of Court, And Modern Decisions, In The Exchequer Of Pleas 896, 908 (Phila., 3d Am. Ed. R.H. Small 1840).

1783) (damages must be "outrageous" and "all mankind at first blush must think so," for a new trial to be ordered for excessive damages).

The United States has traditionally shown equal deference to jury awards, including those the judge considers to be inordinately high:

> There is a cloud of cases going to show conclusively, that although the courts are entirely satisfied that the damages are excessive, and altogether beyond a compensation for the actual loss sustained, they will not, on a motion for new trial, interfere with the finding, unless the verdict is so extravagant as to bear evident marks of prejudice, passion, or corruption.

Theodore Sedgwick, A Treatise On The Measure Of Damages, 533 (1868).

Thus, the Coffin v. Coffin standard remains good law. That case was cited by the Supreme Judicial Court with approval as recently as 2015, and remains in effect by operation of Rule 59(a) which enshrines historic practice. Reckis, 471 Mass. at 299. The Courts should continue to rely on the traditional common law standard for ages to come.

V. THE STANDARD IS IN DANGER

A lack of vigilance will cause the common law standard to descend into a mere unreasonableness standard. See e.g., Bain, 424 Mass. at 768;[15] Murphy, Judicial Assessment of Legal Remedies, 64 OHIO ST. L.J. 153, 189 (1999). The dilution of the standard is well under way in the Federal courts. See Travers v. Flight Servs. & Sys., 2015 U.S. App. Lexis 21671 (1st Cir. 2015), at 30 (appellate

[15] The case cited by Bain certainly does not go so far, and instead merely hypothesized, in dicta involving a matter not at issue in the case, that the standard might be summarized as a finding that "no rational trier of fact could have" reached the same verdict. Honda Motor Co. v. Oberg, 512 U.S. 415, 432 n.10 (1994).

interference with a jury award permitted if the verdict exceeds "any rational appraisal or estimate of the damages that could be based on the evidence before the jury").

The standard has appeared to have been diluted through the following mechanism: The trial court standard has been adopted to serve as the appellate court standard. Consequently with this appellate standard in place, Courts have assumed and implied that a lesser standard binds the trial court. See e.g., Travers, 2015 U.S. App. Lexis 21671, at 30-31.

Moreover, courts have progressively eschewed the standard as traditionally formulated which (1) references the deference to which the jury is entitled, (2) recognizes the requirement for an independent finding that the jury is corrupt, biased, or otherwise "broken," (3) includes a requirement that the magnitude of the award must be "outrageous," "monstrous," "flagrant" or "so shocking," (4) recognizes that the degree of inequity found must "grossly," "obviously," "manifestly" or "palpably" apparent, (5) and that this conclusion would be shared, not just by the judge, but all of humanity, or potential factfinders, at first blush. Courts chipping away at the standard fail to address all of these elements, and eliminate the clarifying words that give the standard its bite, and Constitutional validity.

This is not the way that the sacred institution of the jury should be treated. The standard must not be watered down to vest additional authority in judges. Moreover, it is the trial court that is empowered to act only when the award is

monstrous or outrageous, greatly disproportionate, or obvious to all, at first blush, that it is not appropriate. Coffin, 4 Mass. at 41-42; Barley, 317 Mass. at 42; see Reckis, 471 Mass. at 299 (trial court used "greatly disproportionate" standard); Rivera v. Turabo Med. Ctr. Partnership, 415 F.3d 162, 173 (1st Cir. 2005). The role of appellate courts, after an affirmance by the trial court, must be even more limited, and deferential to the jury, than that.

SUMMARY

In summary, plaintiffs asking a trial judge to affirm a large judgment should encourage the judge to (1) acknowledge deference to the jury; (2) acknowledge that defendant's ultimate burden is to show that the jury, a collective body of twelve people, were corrupt, biased or all took leave of their rational senses at the same moment; (3) acknowledge that with respect to certain types of unliquidated damages, such as emotional distress, reasonable minds will differ; (4) acknowledge that the judge's own view of reasonableness is not at issue, and that his or her discretion arises only when the award is outrageously high and obviously wrong, and that the excessiveness is so clear that every single rational person would instantly feel the same; and (5) review the various indicia of juror conduct for evidence that the jury was grounded, rational, and was properly serving its role.