

You've won a large verdict in your medical malpractice case. Do you think the doctor or hospital writes you a check for that amount of money right then and there? If you do, you're wrong. It would be nice if that were the case, but the reality is that it doesn't happen.

Well, what happens after you get your stunning verdict?

In New York here's the sequence of events:

1. The defense attorney will ask to 'poll the jury'. This means that each juror is asked if that is their verdict. This is done to make sure there's no misunderstanding between what was written down on the jury verdict sheet and what the juror's intent was.
2. After the jury is polled, the judge will thank them for their jury duty and discharge them from their civic responsibilities and they will leave the courtroom.
3. Then, the defense attorney will ask the court to throw out the verdict claiming the verdict is not supported by the evidence. As an alternative, the defense attorney will ask the judge for time to file papers asking to throw out the verdict. When the request is made on papers it gives the attorney time to get the trial transcript and to support their request with actual testimony given in the case.
4. There is a latin term that lawyers use called "Judgment non-obstanto verdicto," or "JNOV," which means that the judgment is not supported by the evidence.
5. The judge may give the attorney 60 days to make their formal request on papers.
6. Once the defense attorney obtains the trial transcript, they must prepare detailed motion papers requesting either that the court throw out the verdict or reduce the award. The reasons to reduce an award are plentiful.
7. After the defense attorney prepares those papers, he must serve them on your attorney; the plaintiff's attorney. Your attorney will then have a limited amount of time to reply.
8. Once all the lawyers have submitted their papers to the court, the judge may request oral argument from both sides. Many judges in New York will not have any oral argument, and instead render a decision solely upon the papers each sides submits to the court.
9. The judge will typically have 60 days to render a decision.
10. Here are the various options that may occur with a 'post-trial motion':
  - i. The judge may decide that she did not want to interfere with the jury's decision and leave the verdict as it was;
  - ii. The judge may decide that the verdict was not supported by the weight of the credible evidence and throw out the entire verdict;
  - iii. The judge may determine that the award was excessive and reduce part or all of the award.
10. If the judge leaves the jury's decision alone, the defense will undoubtedly appeal.
11. If the judge reduces the jury's decision, the defense will likely appeal, claiming that the judge did not reduce it enough.
12. If the judge throws out the verdict, your attorney will likely want to appeal that decision.

Here's some more important points you need to understand when you've won a large verdict in your favor:

- The defense may offer to settle your case at any time after your verdict.
- If your case is appealed, your attorney will likely ask you to pay for the appeal.
- In New York, medical malpractice cases are handled on a contingency basis. This means that your attorney only gets paid if you are successful in your lawsuit. However, if your case is appealed, your retainer likely says that appeals are not included in your agreement. That means that you will be personally responsible to pay for an appeal. Considering that it may cost anywhere between \$10,000 to \$25,000 to hire an appellate attorney to handle your appeal, that fact may play a role if you are considering a settlement offer.
- Your attorney needs to know whether your verdict is sustainable if it goes up on appeal. This means that when your case is appealed, what is the chance that your verdict will be upheld?

When your case is appealed, the higher court has many options:

1. Let's assume the trial judge did not disturb the jury's decision, and now your case is appealed.
  - a. The appeals court can agree not to alter the jury's verdict;
  - b. They can reduce your award;
  - c. They can increase your award if they believe the amount was insufficient;
  - d. They can throw out your award and dismiss your case;
  - e. They can throw out your award and direct that you have a new trial and start all over again.
2. Let's assume the trial judge reduced your jury award and now both you and the defense appeal that action.
  - a. The appeals court can reverse the judge and increase the award to what the jury decided;
  - b. The appeals court can agree with the trial judge;
  - c. The appeals court can decide to reduce the award even further;
  - d. They can throw out your award and dismiss your case;
  - e. They can throw out your award and direct that you have a new trial and start all over again.

If your case is sent back to the trial judge for a new trial, you literally have to start over from scratch and re-try your entire case. If you were on trial for weeks, get ready to spend a few more weeks going through the same trial, except this time with a new jury. If you get another large award, be prepared to go through the same process of post-trial motions and appeals all over again. That also means that your attorney will have to pay the trial expenses all over again. This can turn into a very expensive proposition.

If a settlement offer is made, you and your attorney must consider the risks, benefits and costs to prosecute and defend the post-trial motions and appeal and the resulting final decision. Do not forget the time necessary to get to the finish line. In New York, after a jury verdict, if the appeals process is played out fully, it is conceivable that it will take another one to two years to reach a final decision. If you are required to re-try your case, you can add even more time before you ever reach a final resolution of your case.

#### CONCLUSION:

Winning a large verdict is only the first step toward getting you compensated in your quest for justice. Hopefully this article has opened your eyes to what is involved following your win at trial.

To learn more about medical malpractice or accident cases here in New York I encourage you to explore my popular website, <http://www.oginski-law.com>. If you have legal questions, I urge you to pick up the phone and call me at 516-487-8207 or by email at [lawmed10@yahoo.com](mailto:lawmed10@yahoo.com). I welcome your call.