

POST TRIAL MOTIONS

Andrea Rosholt

arosholt@hawleytroxell.com

208.388.4072

POST TRIAL MOTIONS

- Judgment Not Withstanding the Verdict (JNOV) (Rule 50(b))
- Motion for New Trial (Rule 59(a))
- Remmittur

MOTION FOR JNOV

- Motions for JNOV are “post verdict” motions for directed verdict.
- Motions for JNOV may be made together with a Motion for New Trial under Rule 59(a).
- The standard of review that applies is the same for directed verdict/summary judgment.
- Often, the Court will still submit the issue to the jury first.

RULE 50(B) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (J.N.O.V.)

I.R.C.P. 50(b)(1)

A motion for judgment notwithstanding the verdict must be served not later than **14 days** after entry of the judgment and may be made whether or not the party moved for a directed verdict. If a verdict was not returned a motion for judgment notwithstanding the verdict must be served not later than 14 days after discharge of the jury.

A motion for a new trial may be joined with a motion for judgment notwithstanding the verdict, or a new trial may be requested in the alternative, in conformance with the requirements of Rule 59(a).

A motion to set aside or otherwise nullify a verdict or for a new trial includes a motion notwithstanding the verdict as an alternative. If the jury returns a verdict, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment. If the jury does not return a verdict, the court may direct the entry of judgment or may order a new trial.

F.R.C.P. 50(b)

No later than **28 days** after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

- (1) Allow judgment on the verdict, if the jury returned a verdict;
- (2) Order a new trial; or
- (3) Direct the entry of judgment as a matter of law.

RULE 50(B) MOTION FOR JNOV: STANDARD OF REVIEW

I.R.C.P. 50(b)

- The trial court is not free to weigh evidence or judge the credibility of witnesses in ruling on the motion, and must give the non-movant the benefit of every favorable inference in determining whether there was sufficient evidence presented to make out a jury issue. *Quick v. Crane*, 111 Idaho 759, 727 P.2d 1187 (1986).
- The motion should not be granted if reasonable minds could conclude that a verdict in favor of the non-moving party would be proper. *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 803 P.2d 978 (1990).

F.R.C.P. 50(b)

- The standard for granting a post-verdict motion under Rule 50(b) is exactly the same as the standard for granting a pre-verdict motion under Rule 50(a).
- The standard mirrors the standard for granting summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–151, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

RULE 50(B) MOTION: DIFFERENCES BETWEEN STATE AND FEDERAL LAW

I.R.C.P. 50(b)(3)

The failure of a party to move for a directed verdict, for a judgment notwithstanding the verdict or for a new trial **does not preclude appellate review of the sufficiency of the evidence when proper assignment of error is made in the appellate court.**

***Appellate Courts have upheld a trial court's decision to re-visit a prior denied directed verdict at the close of the evidence. *Am. Semiconductor, Inc. v. Sage Silicon Sols., LLC*, 162 Idaho 119, 126, 395 P.3d 338, 345 (2017), *reh'g denied* (June 8, 2017) (The court concluded that it would revisit the motion for a directed verdict and grant it because there was no evidence supporting the claim as characterized by American Semiconductor.”)

F.R.C.P. 50(c)

Rule 50(b) allows the party who made the Rule 50(a) motion to **renew** it after the jury returns its verdict.

Motions under Rule 50(b) are generally referred to as “post-verdict” renewal motions.

Rule 50(b) does **not** authorize a party to challenge the sufficiency of the evidence for the first time after verdict.

**This includes a limitation on the trial court to grant a post-verdict motion sua sponte. The Court may only act if a party renews a preverdict motion, and only on issues raised by that motion. *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd*, 762 F.3d 829, 844 n.13 (9th Cir. 2014);

RULE 50(B) MOTION: DIFFERENCES BETWEEN STATE AND FEDERAL LAW

I.R.C.P. 50(b)

See Rule 50(b)(3) (requiring proper assignment of error made in the appellate court).

F.R.C.P. 50(b)

Only those grounds raised in a proper pre-verdict Rule 50(a) motion can be renewed after verdict under Rule 50(b). *See Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2617 n.5, 171 L. Ed. 2d 570 (2008) (“A motion under Rule 50(b) is not allowed unless the movant sought relief on similar grounds under Rule 50(a) before the case was submitted to the jury.”).

COMBINING A RULE 50(B) MOTION WITH RULE 59(A) MOTION

I.R.C.P. 50(b)(4)

When the movant combines a Rule 50(b) Motion with a Rule 59(a) motion the following procedures apply:

If the court grants the Rule 50(b) motion, the court must also conditionally rule on any Rule 59(a) motion that will apply if the judgment is later vacated or reversed. I.R.C.P. 50(b)(4)(A). The Court must specify the grounds.

If the court denies the Rule 50(b) motion is denied and the judgment is reversed on appeal, subsequent proceedings must be in accordance with the order of the appellate court. I.R.C.P. 50(b)(4)(B).

A party whose verdict has been set aside on a Rule 50(b) motion, may not later than 14 days after entry of judgment serve a motion for new trial, which must be conditionally granted or denied. *Id.*

A party who fails to make a motion for new trial waives the right to apply for a new trial. I.R.C.P. 50(b)(4)(D).

If the court denies the Rule 50(b) motion, the appellee may assert grounds entitling it to anew trial. If the appellate court reverses the denial of the Rule 50(b) motion nothing in this rule precludes the appellate court from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial will be granted. I.R.C.P. 50(b)(4)(D).

F.R.C.P. 50(b)

When the movant combines a Rule 50(b) Motion with a Rule 59(a) motion the following procedures apply:

If the court grants the Rule 50(b) motion, the court must also conditionally rule on any Rule 59(a) motion that will apply if the judgment is later vacated or reversed. F.R.C.P. 50(c)(1).

If the court grants the Rule 50(b) motion and conditionally grants the Rule 59(a) motion, a new trial must proceed if the judgment is reversed “unless the appellate court orders otherwise.” F.R.C.P. 50(c)(2).

If the court grants the Rule 50(b) motion but conditionally denies the Rule 59(a) motion and the issue is appealed, the appellee needs to assert error and the case will proceed as the appellate court orders. *Id.*

If the court denies the Rule 50(b) motion, the appellee may assert grounds entitling it to anew trial in the even the appellate court concludes the trial court erred in denying the motion. If the appellate court reverses the denial of the Rule 50(b) motion the appellate court may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

RULE 59: GROUNDS FOR NEW TRIAL

I.R.C.P. 59

Grounds for a New Trial. The court may, on motion, grant a new trial on all or some of the issues, and to any party, for any of the following reasons:

- (A) Irregularity in the proceedings of the court, jury or adverse party;
- (B) Any order of the court or abuse of discretion by which either party was prevented from having a fair trial;
- (C) Misconduct of the jury;
- (D) Accident or surprise, which ordinary prudence could not have guarded against;
- (E) Newly discovered evidence, material for the party making the application, which the party could not, with reasonable diligence, have discovered and produced at the trial;
- (F) Excessive damages or inadequate damages, appearing to have been given under the influence of passion or prejudice;
- (G) Insufficiency of the evidence to justify the verdict or other decision, or that it is against the law; or
- (H) Error in law, occurring at the trial.

F.R.C.P. 59

Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

- (A) After a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) After a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

RULE 59: GROUNDS FOR NEW TRIAL (COURT TRIAL)

I.R.C.P. 59(a)(2)

On a motion for new trial in an action tried without a jury, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

F.R.C.P. 59(a)(2)

After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

RULE 59: DEADLINE TO BRING MOTION

I.R.C.P. 59(b)

A motion for a new trial must be filed and served within 14 days after the entry of the judgment.

F.R.C.P. 59

A motion for a new trial must be filed no later than 28 days after entry of judgment.

RULE 59: WHAT MUST BE FILED

I.R.C.P. 59(a)

Any motion for a new trial based upon any of the grounds set forth in subdivisions (A) – (E) must be accompanied by an affidavit stating in detail the facts relied upon in support of the motion. Any motion based on subdivisions (G) or (H) must set forth with particularity the factual grounds for the motion.

F.R.C.P. 59(a)

A timely Rule 59 motion—i.e., one that is filed within 28 days of the entry of judgment—tolls the time for appeal until the trial court resolves the motion.

RULE 59(A) STANDARD OF REVIEW

I.R.C.P. 59(a)

- A trial court may grant a new trial even though there is substantial evidence to support the jury's verdict. *Bott v. Idaho State Bldg. Auth.*, 122 Idaho 471, 475, 835 P.2d 1282, 1286 (1992).
- When ruling on a motion for new trial, a trial court has “broad discretion to redress what it perceives to be a miscarriage of justice.” *Id.* (citing *Sanchez v. Galey*, 112 Idaho 609, 733 P.2d 1234 (1986)).
- A trial court may weigh the evidence and credibility of the witnesses and set aside the jury's verdict based upon its own independent evaluation of the evidence. *Litchfield v. Nelson*, 122 Idaho 416, 422, 835 P.2d 651, 657 (Ct. App. 1992) (citing *Robertson v. Richards*, 115 Idaho 628, 631, 769 P.2d 505, 508 (1989)).

F.R.C.P. 59(a)

“Ultimately, the district court can grant a new trial under Rule 59 on any ground necessary to prevent a miscarriage of justice.” *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd*, 762 F.3d 829, 842 (9th Cir. 2014) (emphasis added):

Unlike with a Rule 50 determination, the district court, in considering a Rule 59 motion for new trial, is not required to view the trial evidence in the light most favorable to the verdict.

Instead, the district court can weigh the evidence and assess the credibility of the witnesses. See *Kode v. Carlson*, 596 F.3d 608, 612 (9th Cir.2010) (per curiam).

The district court also is not limited to the grounds a party asserts to justify a new trial, but may sua sponte raise its own concerns about the damages verdict. See Fed.R.Civ.P. 59(d).

REMITTITUR: ALTERNATIVE TO A NEW TRIAL

Where the court exercises its discretion to set aside a jury verdict for excessiveness, it is required to give plaintiff a choice of reduction of damages or a new trial. In most cases, the Court cannot unilaterally reduce the damages award. If the plaintiff does not accept the reduced award, a new trial is necessary.

Quick v. Crane, 111 Idaho 759, 770, 727 P.2d 1187, 1198 (1986):

Of course, the trial court cannot simply grant a remittitur without ruling on the motion for a new trial based on the excessiveness of damages under I.R.C.P. 59(a)(5).² The trial judge must first have determined that the jury's damage award was so excessive that it could only have been a product of passion or prejudice on the part of the jury. A motion for a remittitur of damages is purely an alternative to this basis for a new trial. Hence, the amount by which the trial judge offers to reduce the damage award is a discretionary decision that is inexorably linked to the exercise of discretion in ruling on a new trial motion under I.R.C.P. 59(a)(5).

Andrea Rosholt
arosholt@hawleytroxell.com
208.388.4072

208.344.6000
www.hawleytroxell.com