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Sandra J. Wulf, CAE, IOM
Rochester

May 13, 2019

Hon. J.B. Pritzker Governor
207 State House
Springfield, IL 62706

Dear Governor Pritzker:

The Illinois Association of Defense Trial Counsel, an organization whose members are committed to protecting and improving civil justice in Illinois, opposes HB 2233, because it would effectively eliminate special interrogatories, which are fundamental to Illinois civil practice. HB 2233 would make substantial changes to the use of special interrogatories. The contents of this bill are in derogation of the common law right to special interrogatories that has been codified and recognized by the courts of this state for nearly 120 years. *Pittsburg, C., C. & St. L.R. Co. v. Smith*, 207 Ill. 486, 490-91 (1904); *Albaugh v. Cooley*, 87 Ill.2d 241, 251-252 (1981).

The effective elimination of special interrogatories would substantially harm the civil justice system. The Illinois Supreme Court has stated that a special interrogatory serves “as guardian of the integrity of a general verdict in a civil jury trial.” *Blue v. Environmental Engineering Co., Inc.* 215 Ill. 2d 78, 112 (2005). A special interrogatory answer is the singular tool that evidences whether the jury decided the facts necessary to support a verdict. Only special interrogatories give any limited insight into whether a verdict resulted from the proper application of the law.

Specifically, the bill would do the following:

First, it would make the decision of whether special interrogatories are given discretionary for the court and not mandatory as under the current law.

Second, if there is a contradiction between the general verdict and the special interrogatory, the special interrogatory does not control as is the case now, but the court, in its discretion, can further instruct the jury or order a new trial.

Third, and perhaps most troubling, the Illinois Supreme Court has specifically held that one provision of HB 2233 – informing the jury about the impact of a special interrogatory answer – is so seriously prejudicial that it denies litigants a fair trial. In *Sommese v. Maling Brothers, Inc.*, 36 Ill.2d 263, 266-67 (1966), the Illinois Supreme Court explained that informing the jury that a special interrogatory supersedes a general verdict “defeats the purpose of a special interrogatory by advising the jury to conform its answer to its verdict so as to protect the verdict without regard to the evidence.” Informing the jury about the nature of a special interrogatory answer makes the answer less reliable, and no legislation on any subject should ever codify the denial of a fair trial.

The reason underlying the rule that the answer to a special interrogatory controls where it is inconsistent with the general verdict is that “a jury more clearly understands a particularized special interrogatory than a composite of all of the questions in a case, and therefore a special finding upon which a jury presumably has more intensively focused its attention should prevail.” *Borries v. Z Frank, Inc.*, 37 Ill. 2d 263, 266 (1967).

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In short, special interrogatories in their current form are essential under Illinois law for courts to ascertain the propriety of a jury's verdict and indeed for the jury itself to ensure that it is coming to the correct conclusion. Testing the elements of a cause of action, and in particular negligence and causation, as well as the fundamentals of an affirmative defense, is necessary to safeguard the integrity of the jury's general verdict. In a great many cases, unless a jury is asked about specific controlling issues in special interrogatories, the court and the public cannot have assurance that the verdict reached was the correct one. Illinois citizens will not receive more fair civil trials through legislation that aims to provide less reliable information about the reasons behind a jury verdict.

For all of these reasons, the civil justice system would be ill served by the effective elimination of special interrogatories and we urge you to veto HB 2233. If you would like to discuss this matter further or need additional information, please feel free to contact me.

Sincerely,

Bradley C. Nahrstadt
2018-2019 President
Illinois Association of Defense Trial Counsel

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