No. 3–09–0302

Order filed May 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

A.D., 2011

GARY K. BIELFELDT,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee/Cross-Appellant,	)	Peoria County, Illinois,
	)	
v.	)	No. 00–MR–44
	)	
KPMG LLP,	)	Honorable
a Delaware Limited Liability Partnership,	)	Joe R. Vespa,
	)	Judge Presiding.
Defendant-Appellant/Cross-Appellee.	)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien concurred in the judgment.
Justice Holdridge dissented.

ORDER

Held: The trial court erred by denying defendant's judgment notwithstanding the verdict because plaintiff failed to prove the essential element of quantifiable injuries and measurable damages resulting from defendant's negligent tax advice. The judgment entered for plaintiff and against defendant is reversed and vacated. Further, plaintiff is not entitled to a new trial based on the trial court's pretrial rulings on issues involving the principle of collateral estoppel.

Plaintiff filed a complaint against defendant claiming tax advisory malpractice. Initially, the trial court granted summary judgment for defendant after finding that plaintiff could not

present sufficient evidence to establish damages because plaintiff's theory was legally flawed and collateral estoppel barred plaintiff's complaint. On appeal, a majority of this court reversed the trial court's summary judgment dismissal and remanded the cause for further proceedings. *Bielfeldt v. KPMG LLP*, No. 3–04–0590 (2006) (unpublished order under Supreme Court Rule 23).

Following remand, plaintiff filed a third amended complaint. A Peoria County jury returned a verdict for plaintiff and awarded damages in the amount of $17,600,000. Later, the trial court reduced the award of damages to $9,998,211. The trial court denied defendant's motion for judgment notwithstanding the verdict. The court also denied plaintiff's posttrial motion to reinstate the jury's award with interest. Defendant appealed, and plaintiff cross-appealed.

We conclude that the trial court erred by denying defendant's request for a judgment notwithstanding the verdict because plaintiff failed to prove injury resulting in damages, one of the essential elements of negligence as set out in his complaint. Accordingly, we reverse and vacate the judgment entered for plaintiff and against defendant. Given our ruling herein, plaintiff's issues raised on cross-appeal are rendered moot. Further, we conclude that plaintiff is not entitled to a new trial in order to prove damages.

FACTS

During the 1970s, plaintiff established a limited liability partnership which focused on futures and hedge accounts which ultimately became named Bielfeldt & Company. In 1976, plaintiff retained defendant to prepare plaintiff's income tax returns and provide plaintiff with tax advice. In 1984, plaintiff began trading government securities. The tax returns prepared by

defendant for plaintiff during the years 1985 through 1988 listed plaintiff as a trader in government securities for tax purposes. During those years, plaintiff paid taxes totaling $91,300,00.

In 1989, Williams, a representative of defendant, began advising plaintiff that being a dealer in securities could have more advantages than being a trader. Williams sent a letter to plaintiff on March 19, 1990, stating that he believed plaintiff should rigorously pursue "the idea that you were in reality functioning as a dealer on many of the transactions you entered into for 1986, 1987, 1988 and 1989."

In 1990, plaintiff ended his business relationship with defendant and retained the services of John Flaherty, a certified public accountant at the firm of Coopers & Lybrand's. Flaherty prepared plaintiff's 1989 income tax return, which also identified plaintiff as a trader in government securities. Thereafter, Flaherty prepared amended tax returns for the years 1984 through 1989 which identified plaintiff as a dealer in government securities rather than a trader as previously reported. The amended returns resulted in plaintiff requesting a tax refund in the amount of approximately $61,500,000, resulting from the reclassification of capital gains and losses based on the same trades contained in plaintiff's original returns, but now reported as trades executed by plaintiff acting as a securities dealer.

The Internal Revenue Service denied plaintiff's refund claim in the amount of approximately $61,500,000 based on the amended tax returns. Plaintiff petitioned for review in the United States Tax Court and that court held plaintiff was not acting as a securities dealer during those trades and sustained the tax commissioner's determination. *Bielfeldt, et al. v. Commissioner of Internal Revenue*, Tax Court Memo 1998-394 (November 6, 1998). Plaintiff

subsequently appealed to the federal court of appeals in *Bielfeldt v. Commissioner of Internal Revenue*, 231 F. 3d 1035 (7th Cir. 2000). The federal court of appeals also held that plaintiff was not a dealer, and therefore, plaintiff was not eligible for an exception to the capital asset tax treatment. *Bielfeldt v. Commissioner of Internal Revenue*, 232 F. 3d at 1037-38. Accordingly, the federal court affirmed the tax court's determination. *Bielfeldt v. Commissioner of Internal Revenue*, 231 F. 3d at 1039.

Thereafter, plaintiff filed an initial complaint in this cause alleging that defendant committed malpractice by failing to advise plaintiff that he should have been conducting his securities business as a securities dealer. In response, defendant filed two motions for summary judgment and a motion to exclude testimony from plaintiff's expert, Charles Linke. Following a hearing on March 26, 2004, the trial court granted all three of defendant's motions.

On plaintiff's first appeal, the majority of this court found that the case involved "harm that theoretically warrants compensation." The majority stated that "defendant's entitlement to summary judgment is not free from doubt" and reversed the trial court's granting of summary judgment in favor of defendant. *Bielfeldt v. KPMG LLP*, No. 3–04–0590 at pp. 8-9 (July 20, 2006) (unpublished order under Supreme Court Rule 23). In the previous appeal, this court noted that "the question is simply whether an appropriate remedy for that harm can be fashioned." *Bielfeldt v. KPMG LLP*, No. 3–04–0590 at p. 8 (July 20, 2006) (unpublished order under Supreme Court Rule 23). The court also found that the doctrine of collateral estoppel did not bar plaintiff's complaint, thereby warranting summary judgment, because the instant case and the prior tax case were not identical since the instant case presented the issue "whether plaintiff could have conducted his transactions as a dealer if defendant had given him proper advice." *Bielfeldt*

v. KPMG LLP, No. 3–04–0590 at pp. 10-11 (July 20, 2006) (unpublished order under Supreme Court Rule 23).

Following remand, plaintiff filed a third amended complaint. In the complaint, plaintiff alleged that defendant negligently prepared plaintiff's income tax returns for the years 1984 through 1988 by failing to inform plaintiff of the beneficial tax consequences of conducting business as a trader versus a dealer, by failing to instruct plaintiff regarding the proper method to conduct business as a dealer which included developing customer relations, and by failing to consider dealer status for plaintiff's income tax returns during the relevant years. Plaintiff asserted that defendant's negligent advice caused plaintiff's damages in excess of $50,000 due to unfavorable tax consequences.

On May 4, 2007, the trial court granted defendant's pretrial motion regarding plaintiff's inability to contest specific findings of fact in the tax appeal based on collateral estoppel. Since the parties were unable to agree on all matters subject to collateral estoppel from the prior proceeding, the trial court entered an order declaring that collateral estoppel applied to certain findings of fact arising from the proceedings in tax court. The order identified the findings subject to collateral estoppel with reference to a revised appendix that included 46 findings of fact. The court held that the identified findings could not be disputed by the parties at trial and ruled that plaintiff could not present evidence inconsistent with these facts during trial.

A jury trial began on August 26, 2008. On August 27, 2008, the trial court entered an agreed order. This order provided the court would "try the facts and make the ultimate decision as to any reduction of any [p]laintiff's verdict to reflect the [p]laintiff's carry-forwards." The parties also agreed that all such evidence and arguments would be presented to the trial court,

outside the presence of the jury.

Plaintiff's Evidence

Edward Chez, a certified public accountant, testified as an expert witness on plaintiff's behalf. Chez identified four types of trades which could be completed by a securities dealer including trades with customers, trades for the dealer's own account, trades made in furtherance of the dealer's activities, and trades to create an inventory for sale to customers at a later time. He explained that trades made for the dealer's own account are subject to capital gains and loss treatment for tax purposes. The other trades receive ordinary tax treatment because they are part of the dealer's business.

Chez believed that if plaintiff had received proper advice from defendant, plaintiff could have established himself as a dealer. Chez stated that defendant failed to meet an accountant's standard of care because of defendant's poor advice and caused plaintiff's inability to receive the income tax refunds sought in the amended tax returns. Chez acknowledged that the damage figure offered to the jury, and contained in plaintiff's amended tax returns, was based upon the assumption that every trade reflected in the tax returns would be considered a trade in the ordinary course of a dealer's business and would receive ordinary tax treatment.

John Flaherty, a certified public accountant, also testified as an expert witness for plaintiff. Flaherty believed that plaintiff had a credible case for claiming that he was a dealer in the securities business as opposed to a trader. Flaherty prepared amended income tax returns for the tax years 1984 through 1989 which were admitted into evidence. Like Chez, Flaherty also testified that the figures in plaintiff's amended tax returns were premised on the assumption that every trade previously completed by plaintiff would have qualified as a dealer trade in the ordinary

course of business, and therefore would have been subject to ordinary tax treatment. Flaherty advised the jury that based upon the amended income tax returns, which listed income and taxes premised upon plaintiff's status as a government securities dealer, plaintiff overpaid taxes in the total amount of $61,555,048 during the years 1984 through 1989.

George Bollenbacher testified as an expert witness in the area of government securities markets. Bollenbacher told the jury that based upon plaintiff's actual transactions and business, plaintiff qualified as a leveraged trader. He explained the difference between a leveraged trader and a dealer is that dealers have customers and generally a sales force. According to Bollenbacher, plaintiff would have qualified as a dealer if he had properly documented his transactions, utilized at least 10% of his business to complete transactions with counterparties or customers, and changed the structure of his business to include sales people.

Bollenbacher believed that plaintiff could have completed 10% of his transactions with customers and that plaintiff could have acquired customers from other dealers. However, Bollenbacher testified that plaintiff would not have been able to maintain his previous purchasing strategy as a dealer because he would likely go out of business. Further, plaintiff would have been required to make markets for his customers and participate in the market on a daily basis. According to Bollenbacher, plaintiff would also have been required to buy additional securities to satisfy customer demand which would have necessitated a change in plaintiff's purchasing strategy from 90% long to something closer to 50% long and 50% short. Bollenbacher explained that "long" meant that a security is purchased without a subsequent potential buyer in mind, whereas "short" implied an agreement to sell a security once it is purchased in the future. Bollenbacher explained that as a dealer, the customers, not plaintiff, would have determined which securities

plaintiff ultimately purchased and sold to customers. Bollenbacher said that in every customer trade, the dealer either carries the position or offsets. By offsetting, the dealer can supply securities to customers without holding every security in inventory.

Bollenbacher acknowledged that it was "not possible to say with any specificity" or reasonable degree of certainty what the financial impact would have been to plaintiff's business due to the required trades with customers, if plaintiff acted as a dealer. Bollenbacher also acknowledged that it was impossible to quantify the economic effect of these additional transactions required as a securities dealer "because it's a hypothetical." When asked, hypothetical or not, that "[w]e won't know the effect of changing those transactions; correct," Bollenbacher answered, "[r]ight."

Cindy James, plaintiff's assistant, testified regarding plaintiff's trade in government securities. She explained that government securities' prices fluctuated rapidly depending on market conditions. James offered examples of trades completed by plaintiff which showed the prices could change multiple times within the same day. She testified that there was not any way to know when the price of a government security would change or when the cost of financing those purchases would change.

Jim Breen, a partner with defendant since 1983, testified regarding the standards for certified public accountants in the preparation of income tax returns. Breen explained that in order to recommend a tax position, a certified public accountant must believe in good faith that the position has a realistic possibility of being sustained if challenged by the taxing body. According to Breen, the phrase "realistic possibility" meant a one in three chance of succeeding if the return was challenged by the Internal Revenue Service. Breen explained that the Internal

Revenue Service audited plaintiff's taxes in 1990 and 1991.

Plaintiff testified that by 1985, he had a $500,000,000 credit line for purchasing securities and that ultimately, he obtained credit lines from numerous firms totaling billions of dollars. He stated that he completed transactions with all the major participants in the government securities market via the telephone. At the advice of defendant, plaintiff conducted these transactions through Account 2900, his personal account at Harris Bank. Plaintiff explained that prices of securities fluctuated, even within the same day, and that the financing associating with the purchase of these securities could change throughout the day.

Plaintiff said that he could have used his business, Bielfeldt & Company, to gather customers and make sales calls. Plaintiff testified that he would have continued to trade on his own timetable based on his market predictions but would have utilized counterparties as opposed to dealers. He explained that he would have developed customers so that he "could do the same amount of buying and selling with them that I would with other primary dealers." Plaintiff acknowledged that his dealer business would have included additional trades beyond those he actually made in the past and that he would have been required to trade regularly in the market.

Defendant's Evidence

The defense presented expert testimony from Kenneth Harris and Van Conway. Harris explained that "a trader is like an investor" who attempts to make money by speculating and using his or her own judgment to determine when to buy and sell securities. This speculation constitutes the principal activity of a trader. Harris said that a dealer "is an entirely different business" because a dealer is a merchant or shopkeeper "standing ready to make a market." A dealer makes money because he has a customer base and does not try "to time the market."

According to Harris, a dealer's decision to buy or sell is in response to customer demand.

For tax purposes, Harris explained that a trader's profits and losses are considered capital gains or losses. However, a dealer's profits and losses conducted in the ordinary course of business receive ordinary tax treatment. In determining whether a dealer's trade receives ordinary tax treatment versus capital treatment, Harris said that you have "to look on a trade by trade basis and determine whether or not the security was acquired and held for sale to customers or whether it was acquired [by the individual] for investment."

Harris acknowledged that plaintiff could have advertised as a dealer, held himself out as a dealer and utilized a sales force to obtain customers which would be critical in determining dealer status. Harris also agreed that plaintiff could have bought securities that customers requested and then sold the securities to customers without changing any of plaintiff's other transactions.

Van Conway testified that a dealer purchases securities with the intent to sell those securities to customers. Van Conway said that if customers were not interested in the purchased securities, a dealer can sell the securities to others as part of a dealer's activity. He explained that the government securities market was a very liquid market with a large volume of transactions occurring on a daily basis.

Collateral Estoppel Findings of Fact

Based upon pretrial rulings regarding collateral estoppel and in response to evidence presented to the jury, the court read specific findings of fact, contained in the revised appendix to the court's order, to the jury. The court explained to the jury that a dealer is a person who purchases securities with the expectation of realizing a profit, not because of a rise in value during the interval between purchase and sale, but because the dealer has or hopes to find a market of

buyers who will purchase the securities at a price in excess of cost. A dealer's profit stems from acting as a middleman between buyer and seller. The court further told the jury that plaintiff's intent was inconsistent with that of a dealer because plaintiff "aimed to reap a profit from an increase in value caused by a favorable fluctuation in interest rates." The court advised the jury, based on the findings of facts subject to collateral estoppel, that plaintiff was not a dealer in treasury securities during the years 1985 through 1989, and that during that time period, plaintiff did not conduct his trading activity as a dealer. The judge informed the jury that plaintiff's securities were not his stock in trade or inventory because plaintiff did not hold the securities for sale to customers, and plaintiff never acquired a security in response to a buyer's request and never received a customer order.

The court informed the jury that the mere fact that plaintiff regularly traded securities did not mean that a purchaser of those securities constituted a customer. Plaintiff's purchasers were primary dealers, Salomon Brothers and Goldman Sachs, and such purchasers were not indicative of plaintiff being a dealer. Instead, plaintiff was Salomon Brothers' and Goldman Sachs' customer. The court also told the jury that plaintiff was familiar with the classifications of dealer, trader and investor which had existed for 35 years at the time in question.

Verdict

On September 10, 2008, the jury returned a verdict in favor of plaintiff and against defendant in the amount of $17,600,000, rather than $61,555,048 as requested by plaintiff. The trial court entered the verdict on the record but reserved judgment pending the court's resolution of the issue of setoff of damages, a procedure agreed to by the parties prior to trial.

Offset of Damages

According to an agreed, pretrial order entered by the court on August 27, 2008, the parties agreed that following trial, the court would assume the role of trier of fact to determine whether the jury's award should be subject to reduction based upon plaintiff's "carry-forwards." Following the jury's verdict, plaintiff filed a brief in opposition to defendant's proposed setoff to the jury's verdict on September 30, 2008. On October 21, 2008, defendant filed a response to plaintiff's posttrial brief regarding damages with an attached affidavit and exhibits from Kenneth L. Harris.

In the affidavit, Harris concluded that plaintiff received some tax benefits from defendant's advice which he measured based upon three different methods of calculation. According to the Harris affidavit using the first-in-time methodology, plaintiff benefitted from defendant's tax advice in a range between $18,876,082 and $44,044,192. Using a pro rate methodology, plaintiff benefitted from defendant's tax advice in the amount of $12,942,012. Finally, Harris determined plaintiff benefitted from defendant's tax advice in the amount of $7,601,789 using a subject capital losses last methodology. Defendant also attached to the response, a copy of Harris' testimony given to the court outside the presence of the jury during plaintiff's trial.

On November 20, 2008, the trial court requested oral arguments on the issue of damage reduction. During argument, defense counsel claimed that the capital losses, which were reported in the tax returns prepared by defendant for plaintiff concerning the returns for 1987, 1988, and 1989, resulted in plaintiff receiving millions of dollars in tax benefits from business losses during these years. Defense counsel believed that through the testimony of Harris at trial, defendant had established that plaintiff received a tax benefit as high as approximately $14,000,000. Alternatively, defense counsel argued that plaintiff received at a "rock bottom" minimum,

$7,600,000, based upon three different methods of calculating the tax benefits utilized by defense expert, Harris.

Plaintiff's counsel responded that defendant bore the burden of proving the amount of the reduction. Plaintiff's counsel argued that the issue amounted to an affirmative defense which defendant failed to plead.

On December 18, 2008, the court found that plaintiff "realized an actual tax benefit of $7,601,789 from the Subject Capital Losses which is to be subtracted from the jury finding." The court entered a written order reducing the award which resulted in a judgment of $9,998,211 in favor of plaintiff and against defendant.

On January 30, 2009, both parties filed posttrial motions. Defendant's posttrial motion requested a judgment notwithstanding the verdict on the grounds that plaintiff failed to prove the essential elements of injury and quantifiable damages.

Plaintiff's posttrial motion requested the court to reverse its order of December 18, 2008, reducing the verdict to $9,998,211. Second, plaintiff requested the court to enter an order providing for interest on the full amount of the verdict from the date of the jury's verdict. Third, plaintiff requested the court to order an additional trial which would allow plaintiff to present evidence for the court to determine the amount of interest plaintiff would have received on income tax refunds based upon the amended tax returns. Further, plaintiff argued that if the court granted defendant's relief, the trial court should reverse its ruling which found plaintiff was collaterally estopped from contesting certain findings of facts and that the trial court erred in making other evidentiary rulings at trial.

On March 2, 2009, defendant withdrew its request for a new trial but still maintained its

request for judgment notwithstanding the verdict. On March 20, 2009, plaintiff filed a reply to defendant's opposition brief which argued in part that plaintiff's claimed errors were not rendered moot because defendant withdrew his request for a new trial.

On April 14, 2009, the trial court entered a written order denying all pending posttrial motions including plaintiff's posttrial motion. On April 16, 2009, defendant filed a notice of appeal. On May 13, 2009, plaintiff filed a notice of cross-appeal challenging the trial court's reduction of the jury verdict and the denial of plaintiff's posttrial motion.

ANALYSIS

On appeal, defendant claims that the trial court erred by denying defendant's motion for judgment notwithstanding the verdict based upon two grounds. First, defendant argues that plaintiff failed to prove that plaintiff was actually injured by defendant's alleged malpractice. Second, defendant argues that plaintiff failed to present evidence which allowed the jury to find quantifiable damages resulting from the alleged negligent tax advice. Plaintiff responds that the trial court properly denied defendant's motion for judgment notwithstanding the verdict.

On cross-appeal, plaintiff claims that the trial court erroneously reduced the jury's verdict and asks this court to reinstate the jury's award in the amount of $17,600,000. Plaintiff also claims that he is entitled to interest on the jury award from the date of the verdict, September 10, 2008. Alternatively, plaintiff responds that if this court grants defendant a judgment notwithstanding the verdict, plaintiff is entitled to a new trial because the trial court's rulings regarding collateral estoppel unfairly restricted plaintiff's evidence concerning damages.

Defendant responds to the cross-appeal by submitting plaintiff is not entitled to a new trial because plaintiff failed to include the collateral estoppel issues as it relates to damages in a timely

filed posttrial motion. Alternatively, defendant argues that the trial court made appropriate findings of fact based upon collateral estoppel. Defendant also contends that the trial court properly reduced the jury's verdict and that plaintiff is not entitled to interest prior to the entry of judgment.

Judgment Notwithstanding the Verdict

We first address defendant's motion for judgment notwithstanding the verdict. A challenge to a trial court's denial of a motion for judgment notwithstanding the verdict is reviewed *de novo*. *York v. Rush-Presbyterian - St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006).

A trial court should grant a judgment notwithstanding the verdict when, viewing the evidence in the light most favorable to plaintiff, there is a total failure or lack of evidence to prove a necessary element of plaintiff's case. *York v. Rush-Presbyterian - St. Luke's Medical Center*, 222 Ill. 2d at 178. A plaintiff proves an element of the claim when there is some evidence which would allow a reasonable trier of fact to conclude the element has been proven. *Nolan v. Weil-McLain*, 233 Ill. 2d 416, 430 (2009); *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 353-54 (1992). If a plaintiff fails to meet this burden as to any necessary element of the claim, a trial court should grant judgment notwithstanding the verdict. *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d at 354.

The case law provides that "[a]ccountants have long been held to be members of a skilled profession, and liable for their negligent failure to observe reasonable professional competence." *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill. 2d 137, 164 (1994) (citing P. Kelly, *An Overview of Accountants' Liability,* 15 Forum 579, 583 (1979)). This

duty to observe reasonable professional competence exists independently of any contract, and therefore, a person may recover for accountant malpractice based upon either a tort theory or contract violation. *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill. 2d at 164.

In this case, plaintiff's complaint is based upon tort. Pursuant to a tort theory, we agree with the parties that plaintiff must prove defendant had a duty to plaintiff; defendant breached that duty; and plaintiff was injured as a result of defendant's breach, thereby incurring damages. Plaintiff argues that this court already determined in the previous appeal that plaintiff has a reasonable basis upon which the jury could calculate damages in this case.

We disagree with plaintiff's interpretation of the first appeal. In the first appeal, this court stated the case involved "harm that theoretically warrants compensation; the question is simply whether an appropriate remedy for that harm can be fashioned." *Bielfeldt v. KPMG LLP*, No. 3–04–0590 at p. 8 (July 20, 2006) (unpublished order under Supreme Court Rule 23). The majority concluded that whether or not plaintiff could fashion and then prove a remedy was not completely free from doubt as a matter of law. Accordingly, this court found summary judgment was not appropriate and remanded the cause to the trial court for further proceedings. *Bielfeldt v. KPMG LLP*, No. 3–04–0590 at pp. 9, 11 (July 20, 2006) (unpublished order under Supreme Court Rule 23).

Our previous ruling recognized that potential damages claimed by plaintiff remained theoretical at the time of summary judgment but could potentially become the subject of adequate proof at trial. However, our ruling did not hold that the reality of measurable damages had been established at the time of summary judgment only.

It is clear that even if negligence has been established by the evidence, a plaintiff cannot recover in a professional malpractice action without proving that the breach of duty of care caused a monetary loss. A breach of the professional duty alone will not suffice. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 226 (2006)

To demonstrate injury and damages, a measurable loss is required rather than a loss founded as pure supposition and conjecture alone. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306-07 (2005). In a tax advisory malpractice case, plaintiff must establish an injury. A plaintiff is not considered injured "unless and until he has suffered a loss for which he may seek monetary damages." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d at 306.

The difficulty in this case is that plaintiff attempted to prove the existence of a financial loss or injury because the amended tax returns claimed plaintiff was acting as a dealer and then showed plaintiff was entitled to a refund after reclassifying capital gains and losses. The tax court determined both that plaintiff was not acting as a dealer and had not overpaid taxes for those precise transactions.

Consequently, plaintiff claimed that with better tax advice he could have met the dealer criteria in past years and obtained this significant refund based on the very same securities trades. To establish a financial injury or loss, plaintiff relied on the expert testimony of John Flaherty, the certified public accountant who prepared plaintiff's amended income tax returns and the testimony of Edward Chez, a certified public accountant. However, both Chez and Flaherty acknowledged that the amount of excessive taxes was calculated based upon the *assumption* that every trade plaintiff personally conducted as a trader in the past years would have been replicated by plaintiff

or his sales staff as a dealer. The fundamental flaw in this theory is the tax court rejected the underlying premise that plaintiff could lawfully pay reduced taxes as a dealer based on precisely the same business practices and the same securities transactions defendant reported in the original returns prepared for plaintiff.

A review of the record shows George Bollenbacher testified as an expert witness for plaintiff. According to Bollenbacher, to qualify as a dealer, plaintiff would need a sales staff and 10% of the completed trades would have to be documented as generated by demands from counterparties or customers. In addition, plaintiff also would have been required to make markets for his customers and participate in the market on a daily basis. Even though plaintiff testified that he could have modified his business to gather customers and to make sales calls while he continued to trade on his own timetable utilizing his own market predictions, Bollenbacher testified that it was "not possible to say with specificity" the impact these required modifications would have had on plaintiff's business. Bollenbacher acknowledged if plaintiff continued his well-established purchasing strategy based on his own market predictions, he would not have been able to successfully maintain his business as a dealer.

Plaintiff's witnesses failed to offer evidence that conclusively demonstrated that the modified business practices required of plaintiff *would* have produced the very same amount of capital gains and losses that mirrored those capital gains and losses reflected in the original tax returns for the years at issue. After reviewing plaintiff's testimony and the testimony of plaintiff's own expert, Bollenbacher, we conclude that the purported financial injury resulting in overpaid taxes based on the rejected amended tax returns was purely hypothetical. Accordingly, we conclude the trial court erred by denying defendant's judgment notwithstanding the verdict due to

the speculative nature of the evidence plaintiff presented to the jury to establish injury and the amount of financial damage.

Plaintiff's Cross-Appeal and Request for New Trial

Given our ruling that the trial court erred by denying defendant's motion for judgment notwithstanding the verdict, plaintiff's claims regarding the verdict raised on cross-appeal are rendered moot. However, plaintiff also argues that if judgment notwithstanding the verdict is granted, plaintiff should receive a new trial in order to prove damages because the trial court improperly restricted plaintiff's evidence based upon its ruling of collateral estoppel.

Plaintiff contends that the trial court improperly precluded plaintiff from presenting evidence to the jury refuting the facts and conclusions of the federal court that plaintiff was not a dealer based on collateral estoppel. Plaintiff also argues that this court determined in the first appeal that collateral estoppel did not preclude plaintiff from revisiting the issues raised in the federal appeal.

Defendant responds that plaintiff has forfeited this issue by failing to include the issue regarding collateral estoppel, as it related to damages, in a timely filed posttrial motion. Alternatively, defendant argues that the trial court did not err in rendering the collateral estoppel rulings and that the error, if any, was harmless.

We first address the issue of forfeiture. Both parties filed timely posttrial motions on January 30, 2009. Plaintiff's posttrial motion requested relief based upon three grounds relating to the amount of the verdict and a request for interest. Within plaintiff's posttrial motion, plaintiff alternatively requested the trial court to reconsider its collateral estoppel rulings against plaintiff in the event that the court granted defendant's request for a new trial. Thereafter, on March 2,

2009, defendant withdrew its request for a new trial and proceeded only on defendant's request for judgment notwithstanding the verdict. Defendant argues that since defendant withdrew the request for a new trial, plaintiff's request to review the ruling on collateral estoppel became moot.

The record reveals that after defendant withdrew its request for a new trial on March 2, 2009, plaintiff filed a reply to defendant's opposition brief on March 20, 2009. In the reply, plaintiff argued that his claims of contingent error were not rendered moot because defendant withdrew its request for a new trial. When the trial court ruled on April 14, 2009, the trial court stated in the written order that it was denying all pending motions, including plaintiff's posttrial motion.

It is true that failure to request a new trial in a posttrial motion waives the issue on appeal. *Cohan v. Garretson*, 282 Ill. App. 3d 248, 258 (1996); 735 ILCS 5/1202(e) (West 2008). In this case, plaintiff filed a document entitled posttrial motion which sought relief based upon different theories, including a challenge to the trial court's estoppel rulings in the event of a new trial. Further, plaintiff included this request in the prayer to the posttrial motion. Although a conditional request, the Code of Civil Procedure allows for the court to rule conditionally on requested relief rendered unnecessary because of other rulings. 735 ILCS 5/2-1202(f) (West 2008).

When the trial court ruled, it did not limit its ruling to defendant's request for judgment notwithstanding the verdict, but stated it ruled upon all pending motions including plaintiff's posttrial motion. We note the court did not deny plaintiff's posttrial motion on the basis that any of the relief had been rendered moot but presumably denied plaintiff's motion on the merits. Further, prior to the trial court's ruling on both parties' posttrial motions, plaintiff filed his reply

with the court which asserted that he was still challenging the court's evidentiary rulings despite the fact defendant withdrew its motion for new trial. Accordingly, we conclude plaintiff has not forfeited the ruling on collateral estoppel for purposes of this appeal.

Next, we address plaintiff's contention that our previous ruling barred the trial court from make collateral estoppel findings in this case. We disagree with plaintiff's interpretation of our prior decision.

During the initial appeal, a majority of this court ruled that summary judgment was not appropriate because collateral estoppel did not bar plaintiff's complaint in its entirety based on negligent tax advice plaintiff may have received. *Bielfeldt v. KPMG LLP*, No. 3–04–0590 at p. 10 (July 20, 2006) (unpublished order under Supreme Court Rule 23). We did not rule that collateral estoppel would not apply to issues within the case and that the parties would be free to relitigate those factual disputes already decided by the Tax Court in the event of future proceedings based on the complaint in this case.

Here, the trial court determined that 46 factual findings resolved in the tax case, could not be disputed by either party in the circuit court based on collateral estoppel arising out of the tax proceedings. Plaintiff argues that the findings of the tax court were not material to this trial and that the doctrine of collateral estoppel should not have been applied.

Next, we address plaintiff's contention that he is entitled to a new trial because the trial court erroneously found the principles of collateral estoppel barred relitigating certain factual determinations. In order for the doctrine of collateral estoppel to apply, the following threshold requirements must exist: "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final judgment on the merits in the prior

adjudication; and (3) the party against whom the estoppel is asserted was a party or in privity with a party to the prior adjudication." *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 433 (2004) (citing *American Family Mutual Insurance Co. v. Savickas,* 193 Ill. 2d 378, 387 (2000)).

In the case at bar, plaintiff's negligent tax advice theory stemmed from the fact that defendant prepared his taxes in the years in question and listed plaintiff as a trader in securities, not a dealer. A review of the record shows that some of the factual issues in this case concerned whether the nature of the completed trades disqualified plaintiff for capital gain treatment as a dealer based on the structure of his business activities.

The record shows that at times, plaintiff offered evidence to the jury that contradicted findings of the tax court or attempted to relitigate those issues previously ruled upon in the tax case. Only in response to this evidence, did the trial court read a limited number of the factual findings to the jury. The findings, recited to the jury by the judge, related primarily to the facts that supported the tax court's decision to consider plaintiff's status to be a trader rather than a securities dealer during the time frame in question. We agree these issues were identical to the factual disputes resolved by the trier of fact in the prior tax proceedings. Therefore, we conclude the elements of collateral estoppel existed.

Moreover, the factual findings recited to the jury by the court did not involve matters related to the amount of restructured capital losses and gains which could have reduced plaintiff's tax consequences if he had conducted all the previously completed trades in a fashion that qualified him as a dealer for tax purposes. Under these circumstances, the findings announced by the court due to collateral estoppel did not relate to the potential injury or damages claimed by plaintiff and did not limit plaintiff's evidence on damages, and therefore, any error in the judge's

ruling could not have affected plaintiff's ability to prove the existence or amount of those damages.

CONCLUSION

The judgment of the circuit court of Peoria County denying defendant's motion for judgment notwithstanding the verdict is reversed, and the judgment against defendant and for plaintiff is vacated.

Reversed and vacated.

JUSTICE HOLDRIDGE, dissenting:

I respectfully dissent. The trial court rejected the defendant's request to overturn the jury verdict. The defendant now invites this court to reject the jury's verdict. Unlike the majority, I would decline that invitation. This court should be guided by the often repeated principle in favor of jury verdicts. Our supreme court has warned us repeatedly that extreme caution must be exercised in considering requests to overturn a jury verdict:

> "A judgment *n.o.v.* should be granted only when 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that no contrary verdict based upon the evidence ever stand.' *Pedrick v. Peoria & Eastern R.R. Co*., 37 Ill. 2d 494, 510 (1967). In other words, a motion for judgment *n.o.v.* presents 'a question of law as to whether, when all the evidence is considered, together with all reasonable inferences from it in its aspect most favorable to the plaintiffs, there is a total failure or lack of evidence to prove any necessary element of the [plaintiff's] case.' *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 311 (1942). Because the standard for entry of judgment *n.o.v.* is 'is a high one' (*Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 106 (2006)), judgment *n.o.v.* is inappropriate if 'reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented.' *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 351

(1995). A court of review 'should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence which did not greatly preponderate either way. [Citations.]' *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992)." *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006).

Moreover, the question of whether a plaintiff has proven his or her entitlement to damages is one best left to the jury:

" '[t]he determination of damages is a question reserved to the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court.' *Richardson v. Chapman*, 175 Ill. 2d 98, 113 (1997). Absent a clear indication in the record that the jury failed to follow some rule of law or considered some erroneous evidence, or that the verdict was the obvious result of passion or prejudice, a reviewing court will not upset the jury's assessment of damages. See *Perry v. Storzbach,* 206 Ill. App. 3d 1065, 1069 (1990)." *Tri-G, Inc. v. Burke, Bosselman & Weaver,* 222 Ill. 2d 218, 247 (2006).

In reversing the trial court's denial of a judgment *n.o.v.* in the instant matter, the majority found that the jury's award of damages was a product of pure speculation and therefore could not stand. The majority is incorrect in four important ways.

First, the majority confused the "fact" of damages with the "amount" of damages. See *Goran v. Glieberman*, 276 Ill. App. 3d 590, 595 (1995) ("Damages are speculative only when uncertainty exists as to the fact of the damages, rather than the amount of damages. *Beerman v. Graff (1993)*, 250 Ill. App. 3d 632, 639 ***.") While a plaintiff must prove that he or she has sustained a monetary loss as the result of the defendant's negligence, the actual amount of the damages does not need to be established with precision. Thus, in *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.,* 216 Ill. 2d 294, 307 (2005), our supreme court pointed out:

> "Making that demonstration [of monetary loss] requires more than supposition or conjecture. Where the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists. See *Lucey v. Law Offices of Pretzel & Stouffer, Chtrd.*, 301 Ill. App. 3d 349, 353 (1998). Damages are considered to be speculative, however, only if their existence itself is uncertain, not if the amount is uncertain or yet to be fully determined. *Profit Management Development, Inc. v. Jacobson, Brandvik & Anderson, Ltd.,* 309 Ill. App. 3d 289, 309 (1999)." *Northern Illinois Emergency Physicians,* 216 Ill. 2d at 307.

Here, the "fact" that Bielfeldt suffered a monetary harm due to the failure of KPMG to render proper tax and accounting advice is amply supported by the record. Plaintiff's experts, Edward Chez, John Flaherty, and George Bollenbacher, each testified to the fact that Bielfeldt had

suffered monetary loss due to KPMG's failure to properly advise him to structure his transactions in government securities in such a way as to be considered a dealer rather than a trader. Bielfeldt's experts testified that, had such advice been given by KPMG, he could have taken the steps necessary to achieve dealer status. The record established that Bielfeldt was in the business of dealing in other securities and could have incorporated sales of government securities into his commodities securities business. As the majority acknowledges, Bollenbacher testified that, in his opinion, Bielfeldt could have qualified as a dealer in government securities if he had properly documented his transactions, utilized at least 10% of his business to complete those transactions with other parties or customers, and changed the structure of his business to include sales people. Slip op. at 7.

In addition to plaintiff's experts' testimony establishing that Bielfeldt suffered monetary harm as a result of defendant's negligent tax advice, plaintiff's exhibit P-1, a letter dated March 19, 1990, from KPMG partner Jack A. Williams to the plaintiff could have been reasonably viewed by the jury as an admission by KPMG that Bielfeldt had suffered monetary harm as a result of the defendant's failure to timely advise him to structure his trades as "dealer" transactions. Specifically, Williams appeared to acknowledge that Bielfeldt could have taken advantage of the positive tax consequences of transacting his business as a dealer:

> "As I discussed with you previously, I believe you should rigorously pursue, (after a complete analysis of the impact on your tax situation for prior and future years) the idea that you were in reality functioning as a *dealer* on many of the transactions you entered into for 1986, 1987, 1988 and 1989. The Internal Revenue

> Service (IRS) is effectively treating you as a dealer on other issues such as their attempt to require you to use the accrual method of accounting, and to capitalize various expenses under the theory you have inventories. This is tantamount to saying that you are a dealer.
>
> If this dealer vs. trader issue is not raised at the agent level, it may be difficult to take that position at the Appeals level. In any event, the credibility of the argument might be questioned by the Appeals officer since it was not raised at the examination level."

While Williams did not testify at trial, the letter was admitted into evidence. Also, Jim Breen, a partner with KPMG, conceded that in order to write that letter, Williams had to be of the opinion that the dealer position for Bielfeldt during the tax years in question was valid and credible. Breen also acknowledged that the government securities transactions that Bielfeldt performed during those tax years were arguably "dealer" transactions. I believe that the majority misapprehends the significance of Williams's letter and Breen's testimony. Taken together, the two support a jury finding that Bielfeldt was, in fact, acting as a dealer of government securities and that his transactions during 1986, 1987, 1988, and 1989, *could have been* reported as dealer transactions.

Given the evidence adduced during the plaintiff's case, it is abundantly clear that the "fact" that Bielfeldt had suffered monetary harm was a result of the defendant's negligent tax advise. The record clearly supports a finding that Bielfeldt could have structured his government securities transactions to comport with the requirements of "dealer" transactions, which would

have resulted in a significant reduction of his tax liability for those years. The majority is in error in holding that the plaintiff's damages were founded upon speculation or conjecture.

The majority's second error is in holding that the tax court's rejection of Bielfeldt's amended tax returns attempting to establish that he was acting as a government securities dealer during those years somehow precludes him from establishing that he suffered monetary harm as a result of KPMG's negligence. The tax court decision established no such thing. The tax court merely decided that, during the years in question, Bielfeldt was not acting as a government securities dealer. *Bielfeldt, et al. v. Commissioner of the Internal Revenue,* Tax Court Memo 1998-394 (November 6, 1998). It did not rule on whether Bielfeldt *could* have structured his government securities trades as "dealer" transactions if he had been properly advised to do so by his tax advisors. Contrary to the majority's conclusion, the tax court's decision to reject Bielfeldt's amended returns had no impact upon the issue of whether he had suffered a monetary harm as a result of KPMG's negligence.

The majority's third error is in finding that there was no evidence upon which the jury could reasonably determine the amount of damages resulting from KPMG's negligence. The majority maintains that the jury's decision to base the damages upon what Bielfeldt would have recovered had his government securities transactions been reclassified as dealer transactions was too speculative. I disagree. The amount of a verdict is generally at the discretion of the jury and is not subject to precise calculation. *Velarde v. Illinois Central R.R. Co.,* 354 Ill. App. 3d 523, 540 (2004). Even when a jury's monetary award is subject to a manifest weight standard of review, as opposed to the *de novo* standard applied to the granting of a judgment *n.o.v.,* a jury's determination of damages is not improper if it is within the range of testimony presented at trial.

Nilsson v. NBD Bank of Illinois, 313 Ill. App. 3d 751, 762 (1999); *F.L. Walz, Inc. v. Hobart Corp.*, 224 Ill. App. 3d 727, 733 (1992). Thus, a jury's award of damages does not need to be based upon any degree of precision or certainty, it need merely be supported by the evidence. *Id.*

Here, the jury's award of damages was sufficiently supported by the record. Bielfeldt presented evidence to the jury seeking to establish that he could have restructured his business operation with minimal additional cost to his operation and that his actual transactions reflected in his tax returns for the years in question could have all counted as dealer transactions for tax purposes. As discussed above, that evidence consisted of *inter alia*: (1) admissions contained in the Williams letter and Breen's testimony that the Williams letter contained an acknowledgment by KPMG that Bielfeldt's transaction could have readily been reclassified as dealer transactions for tax purposes; (2) expert testimony from Edward Chez and John Flaherty concerning the nature of Bielfeldt's business operations and their opinion that Bielfeldt could have restructured his transactions into dealer transactions had he received proper tax advice from KPMG; (3) George Bollenbacher's testimony that, due to the nature of government securities trading and the nature of Bielfeldt's business operation, he could have handled additional transactions in government securities within his existing business structure by shifting approximately 10% of his customer business into government securities; and (4) the fact that Bielfeldt was operating a commodities brokerage business simultaneously with his government securities transactions and, thus, had an existing business infrastructure and client base in which to readily incorporate a 10% shift into customer based government securities transactions.

While Chez , Flaherty and Bollenbacher each acknowledged that the calculation of damages that resulted from KPMG's negligence was premised upon an assumption that every

trade previously completed by Bielfeldt would have qualified as a dealer trade, and, thus, would have qualified for more favorable tax treatment, that assumption was amply supported by the record. The jury was free to accept or reject this assumption. If the jury accepted the evidence proffered by Bielfeldt on the question of damages, which it appears to have done, it could have reasonably concluded that all of Bielfeldt's government securities transactions could have been treated as dealer transactions for tax purposes without any significant adjustments to other income or expenses. This interpretation of the record amply supports the jury's award of damages based upon a reclassification of those transactions.

The majority seems to acknowledge the possibility that the jury could have awarded damages based upon a reclassification of Bielfeldt's transactions, were it not for the fact that, once again, "the tax court rejected the underlying premise that [he] could lawfully pay reduced taxes as a dealer based on precisely the same business practices and the same securities transactions defendant reported in the original returns prepared for plaintiff." Slip op. at 18. Again, the majority misapprehends the meaning of the tax court decision. The tax court merely held that Bielfeldt's practices, as they actually occurred, were insufficient to establish that Bielfeldt could be considered a dealer of government securities. No one is questioning the tax court's determination that Bielfeldt, in fact, did not act as a government securities dealer in the relevant tax years. The question for the jury, unlike the question before the tax court, was whether the record established that Bielfeldt *could* have acted as a government securities dealer during the tax years in question, if he had been properly advised, and if he could have taken the steps necessary to be treated as a government securities dealer without a significant increase in his expenses or income.

The majority maintains that judgment *n.o.v.* was appropriate because Bielfeldt failed to prove that any modified business practices necessary to convert his status to government commodities dealer *would* have produced the very same gains and losses reflected on the original returns for the tax years in question. Slip op. at 18. While it would be difficult for Biefleldt or any other litigant to prove with certainty that anything *would* have happened, the law does not require him to do so. Instead, in order to establish the amount of damages to which he was entitled, he needed to establish that the award was supported by the evidence and was not the obvious result of passion or prejudice. *Tri-G, Inc.* 222 Ill. 2d at 247. Here, despite the fact that millions of dollars were at stake, the question for the jury was quite simple. Could Bielfeldt have made minor changes to his business operation that would have converted his status as a "trader" in government securities to a "dealer" in government securities without significant changes to his other income and expenses? He presented some evidence to the jury to establish that he could have done so. KPMG vigorously opposed that evidence, trying to point out that a dealer "is an entirely different business" from a trader and arguing that Bielfeldt could not have simply made a few changes to his business operation and expected to change the nature of his transactions from "trading" to "dealing." KPMG presented some evidence to support its position. As a question of fact, the jury had the ultimate responsibility to determine whether Bielfeldt could have accomplished a seamless integration of his government securities transactions into his existing securities business. The jury determined, based upon its evaluation of the properly admitted evidence, that he could have accomplished the integration of his government securities operation into his existing business. While there certainly was evidence to the contrary, we cannot say that the jury's award was unsupported by the evidence or the obvious result of passion or prejudice.

The majority's fourth error was in requiring Bielfeldt to "*conclusively*" demonstrate that, by implementing certain business modifications, he *"would"* have produced the very same amounts of gains and losses that he actually generated in the tax he received from the negligent tax advice. Not only does the majority require Bielfeldt to prove more than is required to recover damages for professional negligence, it essentially denies Bielfeldt's right to any recovery. By requiring Bielfeldt to conclusively prove that he would have incurred no additional income and expenses had he been properly advised to restructure his transactions and thus finding that he could not recover for KPMG's negligence, the majority denied Bielfeldt any chance of a recovery for the harm that he incurred as a result of KPMG's negligence. In essence, the majority did not find that Bielfeldt *failed* to prove his damages; rather, it found that he *could not* prove his damages. This effectively denied Bielfeldt access to any remedy for the harm caused to him by KPMG's negligence. As such, the majority's decision would seem to violate the certain remedy provision of our constitution, which provides:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Ill. Const. 1970, art. I, §12.

While I recognize that this constitutional provision is "merely an expression of a philosophy and not a mandate that a certain remedy be provided in any specific form" (internal quotation marks omitted) (*Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 435 (2000)), and generally applies only to guarantee access to the court system (*Schultz v. Lakewood Electric Corp.*, 362 Ill. App. 3d 716, 722 (2005)), it does, nonetheless, require that there be some remedy

for an alleged wrong recognized at common law. *Berlin v. Nathan*, 64 Ill. App. 3d 940, 950 (1978). Here, the majority recognized that Bielfeldt established that KPMG was negligent and caused him monetary harm but denied him any means of obtaining a remedy for that harm.

Because I would find that Bielfeldt provided sufficient evidence upon which the jury could have calculated the damages due him as a result of KPMG's negligence, I would affirm the trial court's denial of the motion for judgment *n.o.v.*

Since the majority found against Bielfeldt and vacated the jury's verdict, it found that his cross-appeal was moot. Bielfeldt maintained in his cross-appeal that: (1) the trial court erred in granting a set off to KPMG against the jury's verdict for tax benefits that Bielfeldt actually received as a result of KPMG's negligent tax advice; and (2) the trial court erred in failing to award him interest from the date of the jury verdict rather than the date judgment was entered. . Since I would have upheld the jury verdict, I will briefly address the cross-appeal.

On the question of whether the trial court properly reduced the jury verdict by the amount of the tax benefit Bielfeldt actually received, the record established that, even under the erroneous advice received from KPMG, Bielfeldt was granted some tax benefit by being allowed to "carry forward" some of his trader losses as reported on his tax returns for the years in question. The record further established that Bielfeldt received approximately $7,601,789 in such carry forward tax benefits. The trial court reduced the jury verdict by this amount pursuant to a stipulation of the parties that the trial court was "to complete the computation of [Bielfeldt's] alleged damages" by determining the value actually received as a result of his trading losses as reported to the IRS and deducting those benefits from the damages awarded by the jury. It is well settled that a party cannot challenge a process to which it has agreed to by stipulation. See *Rockford Township*

Highway Department v. Illinois State Labor Relation Board, 153 Ill. App. 3d 863, 874-75 (1987). Given the stipulation contained in the record permitting the trial court to reduce the jury award by the value of the tax benefit Bielfeldt received as a result of KPMG's negligent tax advice, I would affirm the trial court's ruling.

On the question of interest on the jury verdict, *Illinois State Toll Highway Authority v. Heritage Standard Bank and Trust Co.*, 157 Ill. 2d 282, 297 (1993), mandates that interest begins to accrue from the date of the jury verdict. However, where the damages amount is likely to change between the date of the verdict and the date of judgment, interest begins to accrue on the date of judgment, *i.e.,* the date upon which the damages amount is actually rendered by the trial court. See *Thatch v. Missouri Pacific R.R. Co.*, 69 Ill. App. 3d 48, 52-53 (1979) (a defendant should not be held responsible for interest until the damages amount is actually determined). I would find no error in the trial court awarding interest from the date of the judgment rather than the date of the jury verdict where, under the circumstances in this matter, the damages amount was not actually determined until the judgment was entered.

For the foregoing reasons, I would affirm the judgment of the trial court.