

## Jury Sizes Are Shrinking in Illinois

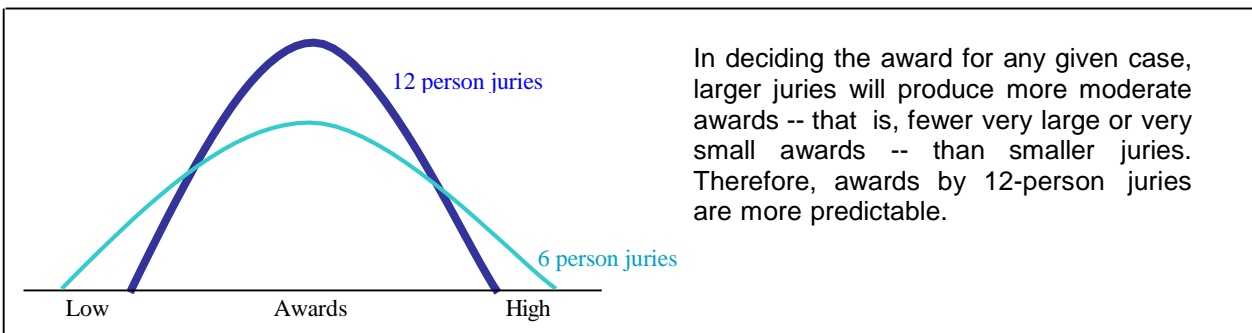
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Late last year, the Illinois General Assembly passed Senate Bill 3075, which proposed to reduce the number of jurors in all civil cases from 12 to 6. The full text of Bill 3075, now Public Act 98-113, [can be found here](#). As one of his final acts as governor, Governor Pat Quinn signed the bill into law, which has an effective date of Jun. 1, 2015. However, attorneys with civil cases in Illinois should be aware that its impact may be felt even in cases filed before the effective date and plan accordingly.

Specifically, the bill amends the Illinois Code of Civil Procedure by providing that all jury cases (instead of cases where the claim for damages is \$50,000 or less) shall be tried by a jury of six, and it deletes language providing the opportunity for a party to demand a jury of 12. The amendment further provides that if alternate jurors are requested, an additional fee established by the county shall be charged for each alternate juror requested. However, so long as the case is filed prior to the effective date and you have paid for a jury of 12, you are still entitled to demand a 12-person jury even if the case is tried after the effective date.

This change in the law means that defense counsel litigating cases in Illinois should prepare for trying their cases before smaller juries in the very near future. As the National Center for State Courts' (NCSC) review of the literature describes, the research that has already been conducted identifies several significant differences in 12-person and 6-person juries that defense counsel should consider for trials involving smaller juries. For one, smaller juries are "more likely to return more erroneous or capricious verdicts." This is sometimes attributed to the research suggesting that smaller juries are less likely to accurately recall evidence or recall certain evidence, at all. Additionally, the NCSC explained that a 5-1 split in a 6-person jury is not the same as a 10-2 split in a 12-person jury because "the single minority vote in a 5-1 split will more likely acquiesce to the majority than if there were a 10-2 split in a 12-person jury." Therefore, smaller groups are more likely to reach a consensus, and as the NCSC concluded, "reducing jury size may reduce the likelihood of hung juries."

Also, as the graph below suggests—reproduced in the NCSC's Review of the Literature, from Michael J. Saks, *The Smaller the Jury, The Greater the Unpredictability*, 79 JUDICATURE, 264 (1996)—the evidence "overwhelmingly" indicates that the size of the jury greatly impacts the size of a verdict, too:



Taking into consideration all of the research, we believe this change will negatively impact

defendants, in general. For the trucking industry specifically, however, this change is likely to have even more of an impact due to the trend in Illinois to expand theories of joint liability, such as broker liability, which permit plaintiff's attorneys to join multiple trucking and broker companies into a single case. Combining the lure of the \$23.8 million broker-liability judgment in *Sperl v. C.H. Robinson Worldwide, Inc.*, 946 N.E.2d 463 (Ill. App. Ct. 2011) with the increased variability in awards generally, we predict changes in both settlement and trial tactics in Illinois trucking cases. As such, defense counsel should prepare clients accordingly and consider how to change their own tactics to preemptively address the new challenges raised by the shrinking juries in Illinois.

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