

9-1-2016

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Recommended Citation

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REMITTITUR IN CIVIL RIGHTS CASES: WHERE THE SEVENTH CIRCUIT WENT WRONG IN *ADAMS V. CITY OF CHICAGO*

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Cite as: Kelsey N. Weyhing, *Remittitur in Civil Rights Cases: Where the Seventh Circuit Went Wrong in Adams v. City of Chicago*, 11 SEVENTH CIRCUIT REV. 174 (2016), at [http://www.kentlaw.iit.edu/Documents/Academic Programs/7CR/11-2/weyhing.pdf](http://www.kentlaw.iit.edu/Documents/Academic%20Programs/7CR/11-2/weyhing.pdf).

INTRODUCTION

On September 14, 2004, brothers Seneca and Tari Adams endured vicious beatings by Chicago police officers outside of their home.¹ Seneca Adams was initially stopped by Chicago police officers while jogging through his apartment complex.² His neighbors looked on as he was kicked, handcuffed, and punched in the face.³ Later, he was driven to a secluded area where an officer continued to beat him.⁴ Having realized that the police car was driving in the opposite direction of the police station, Seneca's brother, Tari, followed the vehicle.⁵ He too was beaten and handcuffed.⁶ The brothers were found

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¹ *Adams v. City of Chicago*, 798 F.3d 539, 541 (7th Cir. 2015).

² *Adams v. City of Chicago*, 62 F. Supp. 3d 771, 773-74 (N.D. Ill. 2014), *vacated and remanded*, 798 F.3d 539 (7th Cir. 2015).

³ *Adams*, 62 F. Supp. 3d at 773-74.

⁴ *Id.*

⁵ *Id.* at 774.

⁶ *Id.* at 775.

guilty of misdemeanors and remained in custody at the Cook County Jail for 204, and 46 days, respectively.⁷

In 2006, the brothers sued.⁸ The City of Chicago admitted liability as to false arrest, use of excessive force, discrimination on the basis of race, and malicious prosecution.⁹ Although the jury awarded Seneca and Tari compensatory damages at trial, the brothers were denied the actual amount of damages that the jury intended.¹⁰ Through a procedure called “remittitur,” the trial judge’s determination that the damages amounts were “grossly excessive” caused the award to be reduced by over half.¹¹ The brothers never agreed to the reduction in damages and were not offered the option of a new trial.¹² Under these circumstances, the brothers were denied justice. Years later in 2015, the trial judge’s order of remittitur was vacated by the Seventh Circuit in *Adams v. City of Chicago*.¹³

The Adams’ story is one of many instances of brutality and targeting of minorities by law enforcement officers. This nation is currently engaged in vigorous discussion about whether the courts may be seen as a true avenue for justice in police brutality cases. Over the last few years, failure to prosecute law enforcement officers for racially motivated violence has caused public outcry. However, the lesser-known procedural obstacle of remittitur has become a vehicle through which civil rights plaintiffs may be denied fairness in court.

In some cases, even where liability is admitted as to racially-targeted policing, a court may significantly reduce the amount of damages awarded by a jury to victims of police brutality. Although the Seventh Amendment provides that “no fact tried by a jury, shall be otherwise reexamined in any court of the United States,”¹⁴ courts have

⁷ *Id.*

⁸ *Id.* at 776.

⁹ *Id.* at 776-77.

¹⁰ *Adams*, 798 F.3d at 541.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 546.

¹⁴ U.S.CONST. amend. VII.

insisted that remittitur is applied only where a jury verdict is excessive as a matter of law. This distinction is tenuous in a civil rights context. Damages awarded by a jury to compensate for pain and suffering or emotional distress involve a subjective determination of fact. Due to the nature of such damages, the trial judge's conclusion that a damages award is excessive will necessarily involve some reexamination of fact. Thus, this paper argues that in civil rights cases, the judge has no constitutional or public policy basis for supplanting the jury's determination with a subjective conclusion about damages of his or her own.

Further, although a "true remittitur" must be accompanied by the alternative option of submitting the case to a new trial, recent scholarship suggests that this option is illusory due to the increased cost, delay, and risk associated with a new trial.¹⁵ While the Seventh Circuit reinstated the jury damages in the Adams brothers' case, it failed to take seriously the brothers' argument that even a "true" order of remittitur violates the plaintiff's rights under the Seventh Amendment.¹⁶ Through an analysis of the trial option and the process by which a judge determines that a jury award is excessive in civil cases, this paper argues that the practice of remittitur serves no constitutional or public policy interest when a plaintiff sues for violation of his or her civil rights.

REMITTITUR IN FEDERAL JURISPRUDENCE

A. *What is Remittitur?*

Remittitur is defined as "the procedure by which a trial judge gives a plaintiff who has received an excessively favorable jury verdict the option of accepting a specified reduction in the jury verdict or

¹⁵ See Suja A. Thomas, *Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment*, 64 OHIO ST. L.J. 731 (2003).

¹⁶ *Adams*, 798 F.3d at 546.

submitting to a new trial.”¹⁷ An order for remittitur most often occurs after a losing defendant moves for a new trial on the ground that the damages awarded by the jury were excessive.¹⁸ Thus, the first step is an initial determination by the trial judge that the jury verdict was excessive.¹⁹ On this question, jurisdictions have adopted differing standards, resulting in confusion and lack of uniformity.²⁰

If the judge concludes that the jury verdict is excessive, he or she may enter an order for remittitur that entitles the defendant to a new trial only if the plaintiff refuses to accept a reduction in the jury verdict.²¹ A “true remittitur” is always accompanied by the alternative option of a submitting the case to a new trial.²² Specifically in a civil rights context, there are few clear guidelines as to deciding how much a jury verdict should be remitted. “There are no standard awards for items such as pain and suffering or damage to reputation, and in determining the amount to be remitted, the trial judge must adhere to the vague standards required by the court of appeals for his circuit.”²³ Most circuits employ a “reasonable jury” standard that seeks to determine the amount that would have been awarded by a reasonable jury.²⁴ In making such a determination, the trial judge must balance the interests of the plaintiff, the interests of the defendant, public policy arguments, and constitutional law under the Seventh Amendment.²⁵

If a plaintiff accepts the reduction in his or her damages, final judgment is entered on the reduced amount.²⁶ In this circumstance,

¹⁷ Irene Sann, *Remittitur Practice in the Federal Courts*, 76 COLUM. L. REV. 299, 302 (1976), <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1530&context=lawfaculty>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 303.

²¹ *Id.* at 304.

²² *Dimick v. Scheidt*, 293 U.S. 474, 482-83 (1934).

²³ Sann, *supra* note 18, at 307.

²⁴ *Id.* at 307.

²⁵ *Id.* at 309, 312.

²⁶ *Id.* at 311.

although a defendant may appeal the trial court's judgment, a plaintiff has "traditionally been precluded from appeal on the theory that, by choice, he has acquiesced in the final judgment on remittitur."²⁷ If the plaintiff chooses the alternative option of submitting to a new trial, he or she must wait until final judgment has been entered on the second trial before obtaining the right to appeal.²⁸ However, the judicial system does not look favorably upon plaintiffs who refuse to remit.²⁹ As explained by Irene Johnson in her 1976 article "Remittitur Practice in Federal Courts":

[A]ppellate courts... seem quite hostile to plaintiffs who refuse to remit. A court will hold that a remittitur from, for example, \$50,000 to \$30,000 was not an abuse of discretion since a reasonable jury might find that amount. In the next breath the appellate court will decide that it was not an abuse of discretion for the judge at the second trial to affirm a verdict of \$5,000 and deny plaintiff's motion for a new trial.³⁰

Thus, in most cases remittitur presents a no-win situation for plaintiffs. As discussed *infra*, a lack of clear and uniform standards for determining that a jury verdict is excessive, accompanied by the illusoriness of the option for a new trial, cause an order for remittitur to coerce a plaintiff into accepting reduced damages, even in situations where a reasonable jury might have awarded the initial amount.

B. History of Remittitur in Federal Courts

The Seventh Amendment provides that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according

²⁷ *Id.*

²⁸ *Id.* at 312.

²⁹ *Id.*

³⁰ *Id.*

to the rules of the common law.”³¹ The United States Supreme Court has never directly addressed the question of whether remittitur violates the Seventh Amendment. However, dicta found in the 1935 case *Dimick v. Scheidt*, combined with long-term practice of remittitur in federal courts, has allowed the procedure to occur largely without question.³²

In *Dimick*, the Court considered the constitutionality of additur, a procedure by which the trial judge increases the size of the jury award.³³ Parallels between additur and remittitur caused the Court to also discuss the constitutionality of remittitur against the Seventh Amendment.³⁴ The action in that case involved negligent operation of an automobile on a public highway.³⁵ At trial, the jury awarded the respondent \$500 in damages.³⁶ The respondent moved for a new trial on the grounds that the damages were inadequate.³⁷ In response, the trial court conditioned a new trial upon the petitioner’s refusal to consent to an increase of the damages to \$1,500.³⁸ The petitioner consented to the increase and the respondent’s motion was denied.³⁹ The respondent appealed, and the court of appeals reversed the judgment, holding that that the trial court’s order violated the petitioner’s Seventh Amendment right to a jury trial.⁴⁰ The Supreme Court granted certiorari in order to determine whether an order of additur, which conditions a new trial upon a party’s refusal to consent to increased damages, violated the Seventh Amendment.⁴¹

³¹ U.S.CONST. amend. VII.

³² *Dimick*, 293 U.S. 482.

³³ *Id.* at 476.

³⁴ *Id.* at 482.

³⁵ *Id.* at 475-76.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 475-476

The Court found that “[i]n order to ascertain the scope and meaning of the Seventh Amendment, resort must be had to the appropriate rules of the common law established at the time of the adoption of that constitutional provision in 1791.”⁴² The Court concluded that at English Common Law in 1791, there was “some practice . . . in respect of decreasing damages,” but there was no similar practice of increasing the amount of damages awarded by a jury.⁴³ Thus, the Court held that trial court’s order of additur violated the respondent’s right to a trial by jury as guaranteed by the Seventh Amendment.⁴⁴

Dicta in the majority opinion grudgingly found that the practice of remittitur was constitutional under the Seventh Amendment.⁴⁵ Writing for the majority, Justice Sutherland reviewed the history of remittitur in the American judicial system.⁴⁶ Remittitur first appeared in the 1822 circuit court decision *Blunt v. Little*.⁴⁷ There, a jury awarded the plaintiff \$2,000 in damages for malicious prosecution.⁴⁸ Finding the damages excessive, Justice Story offered the plaintiff an option to remit \$500 of the damages or submit to a new trial.⁴⁹ His decision rested upon a conclusion that remittitur was commonly practiced at the time that the Seventh Amendment was adopted.⁵⁰

Commenting on *Blunt* and subsequent cases, the *Dimick* Court noted it was “remarkable that in none of these cases was there any real attempt to ascertain the common-law rule on the subject.”⁵¹ In its brief analysis of remittitur at English common law, the *Dimick* Court found

⁴² *Id.* at 476 (citing *Thompson v. State of Utah*, 170 U.S. 343, 350 (1898); *Patton v. United States*, 281 U.S. 276, 288 (1930)).

⁴³ *Dimick*, 293 U.S. at 482.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 484.

⁴⁷ *Id.* at 482-83.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 483.

very little evidence to support Justice Story's proposition that remittitur was commonly performed at the time that the Seventh Amendment was adopted.⁵² Rather, the Court stated:

[T]he sole support for the decisions of this court and that of Mr. Justice Story, so far as they are pertinent to cases like that now in hand, must rest upon the practice of some of the English judges—a practice which has been condemned as opposed to the principles of the common law by every reasoned English decision, both before and after the adoption of the Federal Constitution, which [the Court has] been able to find.⁵³

Therefore, the Court recognized that the constitutional basis for the practice of remittitur was, at best, tenuous.⁵⁴ Justice Sutherland wrote, “it . . . may be that, if the question of remittitur were now before us for the first time, it would be decided otherwise.”⁵⁵ Without the requisite historical evidence to support use of remittitur in the American judicial system, it seems that the Court's reasoning in *Dimick* invites an inference that remittitur does not comport with the Seventh Amendment.

Such reasoning conflicts with the court's ultimate conclusion that remittitur is constitutional.⁵⁶ Despite Justice Sutherland's hesitance, the Court found a basis for the practice of remittitur due to its common use in federal courts.⁵⁷ This conclusion is inconsistent with the Court's emphasis on the importance of the jury as a fact-finding body. It is curious that the Court endorsed the practice of remittitur in the same decision as it declared trial by jury to be the “normal and preferable

⁵² *Id.*

⁵³ *Id.* at 484.

⁵⁴ *Id.* at 484-85

⁵⁵ *Id.*

⁵⁶ *Id.* at 482.

⁵⁷ *Id.* at 484-85.

mode of disposing of issues of fact.”⁵⁸ Thus, the *Dimick* opinion does not preclude discussion about the constitutionality of remittitur in the federal judicial system. On the contrary, the opinion involved conflicting perspectives on the practice of remittitur in federal courts.

Years later, in *Gasperini v. Center for Humanities, Inc.*, the Supreme Court considered whether an appellate court’s review of the size of a jury verdict violated the Seventh Amendment.⁵⁹ In that case, the petitioner, a journalist, sued the respondent for losing the petitioner’s photographic work.⁶⁰ The petitioner had supplied 300 slide transparencies to the respondent for use in an educational videotape.⁶¹ The respondent used 110 of the petitioner’s transparencies but failed to return the transparencies after completion of its videotape project.⁶² The respondent conceded liability for the lost transparencies, and the issue of damages was tried before a jury.⁶³ At trial, the jury awarded the petitioner \$45,000 in compensatory damages.⁶⁴

On appeal, the United States Court of Appeals for the Second Circuit concluded that that the jury award was excessive because it “deviat[ed] materially from what would be reasonable compensation.”⁶⁵ Relying on a New York statute that empowered appellate courts to review the size of jury verdicts,⁶⁶ the Second Circuit vacated the \$45,000 verdict and ordered a new trial, unless the petitioner agreed to an award of \$100,000.⁶⁷ The Supreme Court granted certiorari to consider whether the Seventh Amendment

⁵⁸ *Id.* at 485-86 (“Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.”).

⁵⁹ *Gasperini v. Ctr. for Humanities, Inc.* 518 U.S. 415 (1996).

⁶⁰ *Id.* at 419.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 420.

⁶⁵ *Id.*

⁶⁶ N.Y. Civ. Prac. Law and Rules (CPLR) § 5501(c) (McKinney 1995).

⁶⁷ *Gasperini*, 518 U.S. at 421.

prohibited a federal appellate court from reviewing the size of a jury verdict.⁶⁸

In its consideration of the Seventh Amendment's re-examination clause, the Court adopted an evolving interpretation of common law.⁶⁹ The Court upheld the appellate court's use of the "deviates materially" standard.⁷⁰ In so doing, the Court rejected the petitioner's argument that allowing an appellate court to determine excessiveness of damages was incompatible with the Seventh Amendment.⁷¹

Dimick and *Gasperini* make clear that a proper analysis of the constitutionality of remittitur under the Seventh Amendment must look to the English common law in 1791.⁷² *Dimick* and *Gasperini* diverge, however, in the respective approaches taken by the Court towards interpreting the common law for the purpose of evaluating an excessive damages practice today. In *Dimick*, the Court adopted a static interpretation of the Seventh Amendment that determined its scope as within the common law practice of 1791.⁷³ Four dissenting justices in *Gasperini* also maintained this approach.⁷⁴ However, the majority in *Gasperini* adopted a view of the common law as evolving.⁷⁵ An evolving approach focuses the inquiry on whether an excessive damages practice "maintain[s] the role of the jury as fact-finder, at minimum, as it functioned at English common law in 1791."⁷⁶

Even under an evolving interpretation of the Seventh Amendment adopted by the Court in *Gasperini*, remittitur does not comport with the Seventh Amendment because it "effectively eliminates the

⁶⁸ *Id.* at 422.

⁶⁹ Suja A. Thomas, *Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment*, 64 OHIO ST. L.J. 731, 761 (2003).

⁷⁰ *Gasperini*, 518 U.S. at 417.

⁷¹ *Id.*

⁷² *See id.* at 446; *Dimick v. Schiedt*, 293 U.S. 474 (1935).

⁷³ Thomas, *supra* note 15, at 751.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

plaintiff's right to have damages determined by a jury."⁷⁷ As discussed *infra*, because the trial option does not present a meaningful choice, an order for remittitur forces the plaintiff to "take the judge-remitted verdict or settle the case based on the judge's determination."⁷⁸ On the question of constitutionality, remittitur fares even worse under a static approach to the Seventh Amendment, as adopted by the Court in *Dimick*.⁷⁹ Lack of historical evidence that remittitur was a common English practice in 1791 suggests that remittitur does not comport with public policy or a plaintiff's constitutional guarantee that the "right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."⁸⁰

SEVENTH CIRCUIT STANDARDS FOR REMITTITUR

A. *Considerations for Determining Whether a Jury Verdict is Excessive*

The Seventh Circuit determines the appropriateness of remittitur based upon several considerations outlined in *Thompson v. Memorial Hospital of Carbondale*.⁸¹ In that case, a plaintiff employee sued his employer, a hospital, for alleged racial discrimination in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C.S. § 1981.⁸² The jury ruled in the plaintiff's favor, and awarded him \$500,000.⁸³ On appeal, the Seventh Circuit reviewed the district court's decision not to grant a remittitur.⁸⁴ The court stated that in determining whether a verdict for compensatory damages warrants remittitur, a court should

⁷⁷ *Id.* at 736.

⁷⁸ *Id.*

⁷⁹ *Id.* at 751.

⁸⁰ *Id.*

⁸¹ *Thompson v. Meml. Hosp. of Carbondale*, 625 F.3d 394 (7th Cir. 2010).

⁸² *Id.* at 401.

⁸³ *Id.*

⁸⁴ *Id.* at 408.

look to several factors, including: (1) whether the award is “monstrously excessive”; (2) whether there is no rational connection between the award and the evidence; and (3) whether the award is roughly comparable to awards made in similar cases.⁸⁵ “A monstrously excessive verdict is one that is a ‘product of passion and prejudice.’”⁸⁶ The Seventh Circuit has determined that the “monstrously excessive” and “rational connection” factors are “really just two ways of describing the same inquiry: whether the jury verdict was irrational.”⁸⁷

This standard is problematic because it necessarily involves a judge’s subjective determination concerning what it means for a damages award to be “monstrously excessive.”⁸⁸ Issues also arise when a judge compares damages in cases that are in fact dissimilar.⁸⁹ In a civil rights context, compensatory damages are often awarded for categories that are difficult to quantify, such as pain and suffering or emotional distress. Through the process of remittitur, a trial judge “necessarily reexamines facts to determine whether the particular sum awarded by the jury in damages is excessive,” thereby violating the Seventh Amendment.⁹⁰

B. *Is the New Trial Option Illusory?*

⁸⁵ *Id.* (citing *Marion County Coroner's Office v. E.E.O.C.*, 612 F.3d 924, 931 (7th Cir. 2010)).

⁸⁶ *Adams v. City of Chicago*, 798 F.3d 539, 543 (7th Cir. 2015) (citing *Fleming v. Cty. Of Kane*, 898 F. 2d 553, 561 (7th Cir. 2010)).

⁸⁷ *Adams*, 798 F.3d at 543; *Harvey v. Office of Banks & Real Estate*, 377 F. 3d 698, 713-14 (7th Cir. 2004); *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1285 (7th Cir. 1995).

⁸⁸ *Thomas*, *supra* note 15, at 738.

⁸⁹ *Id.*

⁹⁰ William H. Wagner, *Procedures to Lessen Remittitur's Intrusion on the Seventh Amendment Right to Jury Trial*, 1979 Wash. U. L. Q. 639, 643 (1979), Available at: http://openscholarship.wustl.edu/law_lawreview/vol1979/iss2/13.

An order for remittitur is constitutional only if accompanied by the alternative choice of submitting to a new trial.⁹¹ This general principle governs remittitur in both state and federal courts.⁹² However, in many cases the trial option is not viable due to increased cost, delay, and risk.⁹³ In her article, *Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment*, Suja A. Thomas reports her finding that the trial option is illusory because it does not present plaintiffs with a meaningful choice.⁹⁴

Thomas conducted a study of the 168 federal district court cases reported on Westlaw in which a judge granted remittitur as an alternative to a new trial, as of 2003.⁹⁵ Her findings indicate that a plaintiff accepted remittitur in 71% of the cases, and settlement occurred in 27% of the cases.⁹⁶ A plaintiff took the new trial in only 2% of the cases studied.⁹⁷ The findings were even more dramatic when the pool of cases was narrowed to those that involved “uncertain damages,” such as civil rights or emotional distress cases.⁹⁸ The plaintiff accepted the remittitur or settled in 100% of these cases.⁹⁹

Thomas’s findings demonstrate that for many plaintiffs, exercising the option to a new trial is simply not realistic. She argues that even if a second jury awards damages that are similar or higher than the first, a plaintiff has “every reason . . . to believe that the judge will reduce the damages again,”¹⁰⁰ because “[t]he judge who presides over the second trial will be the same judge who previously

⁹¹ *Dimick v. Scheidt*, 293 U.S. 474, 482-83 (1934).

⁹² *Id.*

⁹³ Thomas, *supra* note 15, at 741-42.

⁹⁴ *Id.* at 740.

⁹⁵ *Id.* at 744

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 745.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 740.

determined the remitted amount was the maximum award under the facts.”¹⁰¹

Further, if a plaintiff refuses to accept damages, he or she is unable to appeal the trial court’s order for a new trial after the second trial is completed.¹⁰² At this point, the plaintiff is likely to have incurred significant expenses in costs and attorney’s fees.¹⁰³ Thus, the plaintiff is forced to accept a reduced damages award or settle with significantly less bargaining power as a result of the judge’s order for remittitur.

Because an appellate court may be hostile towards a plaintiff who refuses to remit his or her damages, remittitur may be seen as a “coercive device.”¹⁰⁴ “The plaintiff would like to keep his entire verdict, but the risk and expense of a new trial are too high . . . the plaintiff may reluctantly decide to remit rather than take the chance of losing some or all of the remainder in the second trial.”¹⁰⁵ Without meaningful choice, Thomas’ study makes a strong argument that the trial option is illusory.¹⁰⁶ Thus, even where present, an order for remittitur does not comport with the Seventh Amendment.

THE SEVENTH CIRCUIT’S DECISION IN *ADAMS V. CITY OF CHICAGO*

In April 2015, the Seventh Circuit decided *Adams v. City of Chicago*.¹⁰⁷ Although the Seventh Circuit has a longstanding history of support for the remittitur procedure, the plaintiffs in *Adams* directly challenged the constitutionality of remittitur as a violation of their rights to a jury trial under the Seventh Amendment.¹⁰⁸ The Seventh Circuit declined to address this facet of the plaintiffs’ claim, stating, “it

¹⁰¹ *Id.*

¹⁰² Sann, *supra* note 18, at 311.

¹⁰³ Thomas, *supra* note 15, at 741-42.

¹⁰⁴ Sann, *supra* note 18, at 312.

¹⁰⁵ *Id.*

¹⁰⁶ Thomas, *supra* note 15, at 744.

¹⁰⁷ *Adams v. City of Chicago*, 798 F.3d 539 (7th Cir. 2015).

¹⁰⁸ *Id.* at 546.

would be bold indeed for a court of appeals to come to such a conclusion, given what the Supreme Court has said on the topic.”¹⁰⁹ The Seventh Circuit’s decision presents an opportunity to re-examine Supreme Court doctrine regarding remittitur, and specifically to address the ramifications of remittitur in civil rights cases.

A. *Facts*

At approximately 8:00 p.m. on September 14, 2004, Seneca Adams was arrested by Chicago police officers.¹¹⁰ Seneca was stopped while jogging through the apartment complex where he lived with his twin sister, Sicara Adams.¹¹¹ The officers shouted racial slurs at Seneca, pointed their pistols at him, and punched him in the face several times in front of Seneca’s family and other spectators.¹¹² When the officers drove Seneca away from the apartment complex, Seneca’s sister, Sicara, and brother, Tari Adams, decided to follow in Tari’s car.¹¹³

At a secluded location, the police officers continued to beat Seneca.¹¹⁴ When the officers realized that they had been followed, a police officer punched Tari in the face.¹¹⁵ Sicara and Tari attempted to leave the scene but were followed by a police car that slammed into the driver’s side of Tari’s car.¹¹⁶ Tari was arrested and beaten as he tried to exit his car.¹¹⁷

¹⁰⁹ *Id.*

¹¹⁰ *Adams v. City of Chicago*, 62 F. Supp. 3d 771, 773-74 (N.D. Ill. 2014), *vacated and remanded*, 798 F.3d 539 (7th Cir. 2015).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 774.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 775

¹¹⁷ *Id.*

Eventually, both brothers were taken to a local hospital.¹¹⁸ Seneca was charged with four counts of aggravated battery and unlawful use of a deadly weapon.¹¹⁹ Tari was charged with four counts of aggravated assault and two counts of aggravated battery.¹²⁰ Both were found guilty of misdemeanors at a bench trial in the Circuit Court of Cook County.¹²¹ The brothers remained in the custody of the Cook County Jail for 204 days, and 46 days, respectively.¹²² However, on December 19, 2006, the charges against Seneca and Tari were vacated and their records were expunged.¹²³

The brothers sued the City of Chicago and individual police officers as a result of the vicious beatings and prolonged detentions that they were forced to endure.¹²⁴ They filed a complaint in federal court, invoking federal question jurisdiction for their claims under 42 U.S.C. §§ 1983 and 1985 and supplemental jurisdiction for their state law claims.¹²⁵ The City agreed to admit liability to both Seneca and Tari Adams for (1) false arrest, in violation of the Fourth Amendment; (2) excessive force, in violation of the Fourth Amendment; (3) discrimination on the basis of race, in violation of the Equal Protection Clause of the Fourteenth Amendment; and (4) malicious prosecution, in violation of Illinois state law.¹²⁶ In exchange, the brothers dropped their claims against the individual officers.¹²⁷

B. The District Court's Holding

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 776.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 776-77.

¹²⁷ *Id.* at 777.

The case proceeded to a jury trial on compensatory damages against the City on February 18, 2014, wherein the jury awarded Seneca \$2,400,000 and Tari \$1,000,000 in damages.¹²⁸ At this point, however, something unexpected happened; the district court entered an order for remittitur, reducing each award to \$1,170,000 and \$350,000, respectively.¹²⁹ The brothers were forced to accept this reduction, as they were not offered the option of a new trial.¹³⁰ They appealed this order to the Seventh Circuit.¹³¹

C. *The Seventh Circuit's Holding*

Seneca and Tari argued that the district court's order of remittitur should be vacated because it violated their Seventh Amendment right to a jury trial.¹³² They relied heavily upon the scholarship of Suja A. Thomas, in which she proposes that the United States Supreme Court has never directly addressed the constitutionality of remittitur, and that in fact its interpretation of the Seventh Amendment as related to the unconstitutionality of additur disfavors use of remittitur as well.¹³³ Although the Seventh Circuit held in the Adams brothers' favor, it dismissed this argument based upon the Supreme Court's decision in *Dimick* and others.¹³⁴

In its opinion, the Seventh Circuit first addressed why the plaintiffs had appellate jurisdiction in this case. The court recognized that generally, "a plaintiff who accepts a reduced award may not appeal from the court's decision to cut back on the jury's verdict."¹³⁵ Based upon this rule, the City argued that because the Adams brothers accepted their reduced damages, they could not appeal the district

¹²⁸ *Adams v. City of Chicago*, 798 F.3d 539, 541 (7th Cir. 2015).

¹²⁹ *Id.*

¹³⁰ *Id.* at 542.

¹³¹ *Id.* at 541.

¹³² *Id.*

¹³³ Thomas, *supra* note 15, at 738.

¹³⁴ *Adams*, 798 F.3d at 546.

¹³⁵ *Id.* at 541.

court's order of remittitur. However, the Seventh Circuit recognized that appellate jurisdiction was secure because the Adams brothers were never offered the option of a new trial, as a "true remittitur order" requires.¹³⁶ Once jurisdiction was decided, the question in the case became what to do about the district court's failure to provide the Adams brothers with this option.¹³⁷

The Adams brothers asked the Court to reinstate the jury verdict, while the City argued that the Adams brothers should not be allowed to skip the step of having to choose between reduced damages and a new trial.¹³⁸ Thus, the Seventh Circuit turned to an excessive damages test. The test involves three factors, including: "whether (1) the award is monstrously excessive; (2) there is no rational connection between the award and the evidence, indicating that it is merely a product of the jury's fevered imaginings or personal vendettas; and (3) whether the award is roughly comparable to awards made in similar cases."¹³⁹

The Seventh Circuit's application of this test demonstrates the level to which an order for remittitur is a subjective determination, particularly in civil rights cases: "We have observed that the 'monstrously excessive' standard and the 'rational connection' standard are really just two ways of describing the same inquiry: whether the jury verdict was irrational."¹⁴⁰ In deciding a matter of fact, remittitur effectively allows a judge's subjective determination to replace that of the jury's, even where, as here, it cannot be demonstrated that the judge is better equipped to make such a determination. The Seventh Circuit further analogized the jury verdict to the damages awards in past decisions, finding that the original \$2,400,000 awarded to Seneca and \$1,000,000 awarded to Tari did not

¹³⁶ *Id.*

¹³⁷ *Id.* at 542.

¹³⁸ *Id.*

¹³⁹ *Id.* at 543 (citing *G.G. v. Grindle*, 665 F.3d 795, 798 (7th Cir. 2011)).

¹⁴⁰ *Id.* (citing *Harvey v. Office of Banks & Real Estate*, 377 F.3d 698, 713–14 (7th Cir. 2004)); *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1285 n. 13 (7th Cir. 1995).

deviate greatly from other similar cases.¹⁴¹ In doing so, the Seventh Circuit again represented why this type of standard may cause inaccuracies: “The problem, well illustrated by the briefs in this case, is that one can always find excessive force cases with verdicts at different levels.”¹⁴² In discussing previous cases, the Seventh Circuit admitted that this type of evidence is “anecdotal . . . at best.”¹⁴³

Despite its recognition of the problems associated with the “monstrously excessive” standard, the Seventh Circuit declined to consider Plaintiffs’ argument that the practice of remittitur itself violates the Seventh Amendment.¹⁴⁴ The Seventh Circuit’s opinion inaccurately interpreted Justice Steven’s opinion in *Gebser v. Lago Vista Independent School District*¹⁴⁵ and the majority opinion in *Dimick*¹⁴⁶ as directly addressing, and affirming, the constitutionality of remittitur.

D. The Adams Brothers’ Seventh Amendment Argument

In addition to arguments more specific to their case, the Adams brothers asserted that the order of remittitur was unconstitutional because it violated their right to a jury trial under the Seventh Amendment.¹⁴⁷ Relying on the scholarship of Suja A. Thomas, the brothers argued that damages are a question of fact, properly determined by the jury, which cannot be supplanted by a judge’s personal opinion.¹⁴⁸ Their argument called into question current standards for determining whether remittitur is unconstitutional as

¹⁴¹ *Id.*

¹⁴² *Id.* at 545.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 546 (“We cannot resist observing, however, that it would be bold indeed for a court of appeals to come to such a conclusion, given what the Supreme Court has said on the topic”).

¹⁴⁵ *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

¹⁴⁶ *Dimick v. Schiedt*, 293 U.S. 474 (1935).

¹⁴⁷ *Adams*, 798 F.3d at 546.

¹⁴⁸ *Id.*

inapplicable and inappropriate to cases that involve determination of “uncertain damages,” such as civil rights cases.¹⁴⁹ For example, the reasoning advanced by the Adams brothers involved the ancillary assumption that remittitur is unconstitutional because in most cases the option for a new trial is illusory.¹⁵⁰ Thus, even if this option had been provided to them, the remittitur order would not have been sufficient to pass constitutional muster under the Seventh Amendment.

At common law, review of judgments was limited to questions of law, not fact.¹⁵¹ The Adams brothers advanced a simple and straightforward argument: the trial judge should not have been permitted to supplant the jury verdict with his own opinion.¹⁵² They asked that the Seventh Circuit vacate the district court’s remittitur and order it to reinstate the initial jury verdict.¹⁵³

In *Gasperini*, the Supreme Court cited a Second Circuit opinion: “We must give the benefit of every doubt to the judgment of the trial judge; but surely there must be an upper limit, and whether that has been surpassed is not a question of fact with respect to which reasonable men may differ, but a question of law.”¹⁵⁴ This principle served as the foundation of the City of Chicago’s case. The City claimed that the district court did not err in its order of remittitur because the damages awarded to Seneca and Tari were so excessive as to present a question of law for the district court judge.¹⁵⁵

However, counsel for the Adams brothers disputed the application of the same principle here, and to other civil rights cases involving

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 452 (1996) (“The writ of error only lies upon matter of law arising upon the face of the proceedings; so that no evidence is required to substantiate or support it”) (internal citations omitted).

¹⁵² Reply Brief for Plaintiffs-Appellants at 13, *Adams v. City of Chicago*, 798 F.3d 593 (7th Cir. 2015) (No. 14-2862), 2015 WL 1020418.

¹⁵³ *Adams v. City of Chicago*, 798 F.3d 539, 542 (7th Cir. 2015).

¹⁵⁴ *Gasperini*, 518 U.S. at 435 (quoting *Dagnello v. Long Island R. Co.*, 289 F.2d 797, 806 (2d Cir., 1961)).

¹⁵⁵ Reply Brief for Plaintiffs-Appellants, *supra* note 157, at 14.

“uncertain damages” in general.¹⁵⁶ The reply brief for Seneca and Tari Adams distinguishes *Gasperini* as a case in which the Supreme Court “was analyzing hard numbers, an excess of which could arguably been seen as unlawfully excessive.”¹⁵⁷ In *Gasperini*, the Supreme Court considered a breach of contract case.¹⁵⁸ There, the defendant-appellee lost transparency slides belonging to a photographer and was thus unable to follow through on his agreement that the slides would be given back to the photographer upon completion of the project for which they were needed.¹⁵⁹ Unlike the emotional and psychological damages involved in *Adams*, *Gasperini* considered only measurable damages related to the value of the lost transparencies.¹⁶⁰

Justice Scalia’s dissenting opinion in *Gasperini* touches upon the injustice that results from the failure to make such a distinction.¹⁶¹ Concerned that the *Gasperini* holding would allow courts to reduce jury verdicts without tangible evidence of the jury’s unlawfulness, Justice Scalia turned to the purpose of the Seventh Amendment.¹⁶² He stated:

There is no small irony in the Court's declaration today that appellate review of refusals to grant new trials for error of fact is ‘a control necessary and proper to the fair administration of justice.’ It is objections to *precisely* that sort of “control” by federal appellate judges that gave birth to the Reexamination Clause of the Seventh Amendment.¹⁶³

Within the spirit of Justice Scalia’s argument is the Adams brothers’ argument that reduction of jury damages in a civil rights case without

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Gasperini*, 518 U.S. at 419.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 448-49 (Scalia, J., dissenting).

¹⁶² *Id.*

¹⁶³ *Id.*

tangible evidence of the jury's unlawfulness subverts the meaning and purpose of the Seventh Amendment.

Additionally, the Seventh Circuit in *Adams* lamented the imperfect application of the excessive damages standard to "uncertain" damages cases, in which a subjective determination must be made regarding damages as opposed to a number that may be generated by a formula.¹⁶⁴ The Seventh Circuit stated that comparisons "amount to anecdotal evidence at best."¹⁶⁵ Nevertheless, the court compared *Adams* to other excessive force cases in which compensatory damages were awarded.¹⁶⁶

Therefore, the Seventh Circuit's decision in *Adams* brings to the fore concerns about whether a judge may determine that a damages award in any civil rights case is truly excessive and thus warrants a remittitur order. It seems that Justice Scalia's concern that a jury verdict should not be remitted without sufficient evidence of the jury's unlawfulness has manifested itself in this case.¹⁶⁷ The Seventh Circuit's opinion describes no evidence of legal error, mistake in jury instruction, or statutory cap on the damages permitted at the trial court level in this case. Indeed, current standards for remittitur that ask a court to determine whether a damages award is "monstrously excessive" by observing whether it is roughly comparable to other, "similar" cases necessarily permit a judge to supplant the jury's determination with a subjective, "uncertain," determination of his or her own. This simply cannot be supported, as it goes against the rights and privileges afforded a plaintiff by the Seventh Amendment.

Finally, Justice Scalia's dissenting opinion in *Gasperini* is instructive as to the Court's error in finding a basis for the practice of remittitur solely in its longterm practice by federal courts.¹⁶⁸ Critiquing the majority decision that permitted an appellate court to review the size of jury verdicts, Justice Scalia stated:

¹⁶⁴ *Adams v. City of Chicago*, 798 F.3d 539, 545 (7th Cir. 2015).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See *Gasperini*, 518 U.S. at 448-49 (Scalia, J., dissenting).

¹⁶⁸ *Gasperini*, 518 U.S. at 448-49 (Scalia, J., dissenting).

Today, the Court overrules a longstanding and well-reasoned line of precedent . . . One reason is given for overruling these cases: that the Courts of Appeals have, for some time now, decided to ignore them. Such unreasoned capitulation to the nullification of what was long regarded as a core component of the Bill of Rights- the Seventh Amendment’s prohibition on appellate reexamination of civil jury awards- is wrong.¹⁶⁹

Although the facts of *Gasperini* differ from use of remittitur in *Adams*, Justice Scalia’s assertion is equally applicable to reductions in damages ordered by trial judges. A court should not be permitted to circumvent the requirements of the Seventh Amendment simply because courts have done so before. This harm is likely to occur in “uncertain” damages situations, including cases that involve damages incurred by police brutality. In this context especially, an order of remittitur is unconstitutional unless substantiated by concrete evidence related to mistake in jury instruction, a damages award that exceeds some statutory cap on damages, or other legal error.

CONCLUSION

In order to provide a true legal remedy to victims of police brutality, courts must abandon the procedural obstacles that prohibit civil rights plaintiffs from obtaining justice. While dicta found in the Supreme Court’s decision *Dimick* suggests that a constitutional basis for remittitur may be found in its long-term practice by federal courts, the Court’s reasoning failed to analyze remittitur in depth.¹⁷⁰ In light of the fact that little evidence can be found of a historical practice of remittitur in English common law in 1871, remittitur falls beyond the scope of the Seventh Amendment’s guarantee of a jury trial.¹⁷¹ Although the Seventh Circuit reversed the order of remittitur in

¹⁶⁹ *Id.*

¹⁷⁰ *Dimick v. Schiedt*, 293 U.S. 474, 484 (1935).

¹⁷¹ *Id.*

Adams, by neglecting to consider the plaintiff’s Seventh Amendment argument, the Seventh Circuit failed to issue a decision that would prevent similar harm to future victims of police brutality.¹⁷² The *Adams* decision illustrates the tension between remittitur orders and the Seventh Amendment.

Specifically in the context of cases involving “uncertain” damages such as compensation for pain and suffering, a trial judge’s determination that these damages are “excessive” as a matter of law necessarily involves his or her reexamination of the facts.¹⁷³ The “monstrously excessive” standard in use by the Seventh Circuit to determine whether a jury verdict is excessive is unclear, and invites the trial judge’s subjective determination about the size of an acceptable damages award to supplant the determination of the jury. Further, the trial option presented to plaintiffs as an alternative to reduced damages is illusory.¹⁷⁴ Due to the increased cost, delay, and risk of loss associated with a new trial, plaintiffs rarely exercise the trial option when presented with an order for remittitur.¹⁷⁵ In addition, an appellate court may look unfavorably upon a plaintiff who refuses to remit his or her damages.¹⁷⁶ Therefore, the trial option does not present a meaningful choice, but, rather, coerces a plaintiff to accept reduced damages lest he or she lose the full sum at a new trial.

While the procedure of remittitur has thus far escaped public attention, it provides a significant obstacle for victims of police brutality and other “uncertain” damages that seek justice in court. Remittitur serves no constitutional or public policy interest in civil rights cases. Therefore, in cases in which a plaintiff sues for violation of his or her civil rights, courts must abandon the practice of remittitur in order to facilitate justice.

¹⁷² *Adams v. City of Chicago*, 798 F.3d 546 (7th Cir. 2015).

¹⁷³ *Wagner*, *supra* note 89, at 643.

¹⁷⁴ *Thomas*, *supra* note 15, at 741-42.

¹⁷⁵ *Id.*

¹⁷⁶ *Sann*, *supra* note 18, at 312.