

A retailer brought a federal diversity action against a wholesaler, alleging breach of contract and fraudulent misrepresentation. After the parties presented their evidence at trial, the court instructed the jury on the law. Neither party filed a motion for judgment as a matter of law before the case went to the jury.

The jury found for the retailer on both claims. After the court entered judgment on the verdict, the wholesaler moved for a new trial and for judgment as a matter of law, arguing that the evidence was insufficient to support the jury verdict on either claim. The court acknowledged that there had been problems with some of the evidence, but it denied the motions. The wholesaler appealed, challenging the sufficiency of the evidence.

Should the appellate court consider the wholesaler's challenge?

- A. No, because a determination of the sufficiency of the evidence is solely within the jury's province.
- B. No, because the wholesaler did not raise the sufficiency-of-the-evidence issue in a motion for judgment as a matter of law before the case went to the jury.
- C. Yes, because, as the trial court acknowledged, the wholesaler has strong arguments on the challenge.
- D. Yes, because the challenge was raised and ruled on by the trial court before the wholesaler filed the appeal.

Explanation:

A party may **challenge on appeal** the **sufficiency of the evidence** supporting the jury's verdict so long as that party made the appropriate motions during and after trial. To preserve a sufficiency-of-the-evidence issue for appeal, Federal Rule of Civil Procedure (FRCP) 50 **requires** that a party do the following:

- Before the case is submitted to the jury, **move for judgment as a matter of law** (JMOL)—ie, a judgment entered in favor of the movant because the evidence is legally insufficient for a reasonable jury to find in the nonmovant's favor
- Within 28 days after the entry of final judgment, file a **renewed motion for JMOL**—the party may also include an alternative or joint request for a new trial with this motion

Here, the wholesaler moved for JMOL and a new trial *after* the court entered judgment on the jury's verdict. However, the wholesaler did *not* raise the sufficiency-of-the-evidence issue in a motion for JMOL *before* the case went to the jury as required by FRCP 50. As a result, the wholesaler did not preserve this issue for appeal, and the appellate court should not consider the wholesaler's challenge.

(Choice A) A determination of the sufficiency of the evidence is not solely within the jury's province because the trial and appellate court may assess whether the evidence was legally sufficient to support the verdict.

(Choices C & D) The trial court acknowledged that the wholesaler has strong arguments for challenging the sufficiency of the evidence and ruled on the wholesaler's posttrial motions.* However, the appellate court cannot consider that challenge because the wholesaler failed to move for JMOL before the case was submitted to the jury.

*Technically, the trial court erred in considering the merits of the wholesaler's motion for JMOL since the motion was not made before the case was submitted to the jury.

Educational objective:

A party may challenge on appeal the sufficiency of the evidence supporting the jury's verdict if that party (1) moved for judgment as a matter of law (JMOL) before the case was submitted to the jury and (2) renewed its motion for JMOL within 28 days after the entry of judgment.

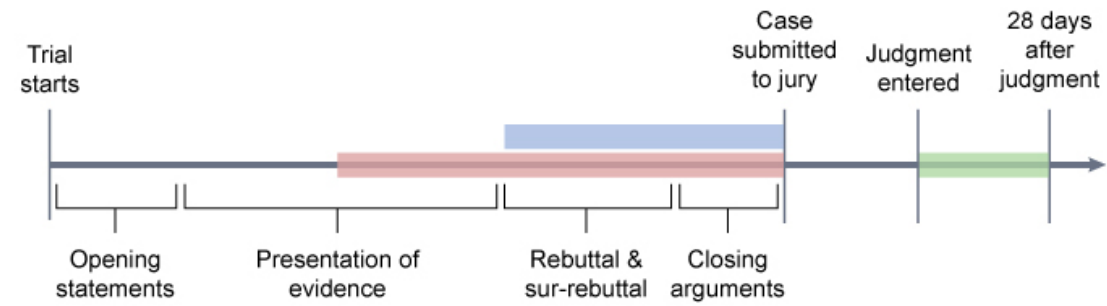
References

- Fed. R. Civ. P. 50(a) (motion for judgment as a matter of law).
- *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 399–402 (2006) (explaining the procedural requirements to challenge the sufficiency of evidence supporting a jury verdict).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Timeline for seeking judgment as a matter of law (JMOL)



■ = Defendant can seek JMOL ■ = Plaintiff can seek JMOL ■ = Losing party can *renew* JMOL

©UWorld