

**UNITHERM FOOD SYSTEMS, INC. v.  
SWIFT-ECKRICH, INC., dba ConAgra Refrigerated Foods**

Supreme Court of the United States, 2006.  
\_\_\_ U.S. \_\_\_, 126 S.Ct. 980, 163 L.Ed.2d 974

*Professor's Note:* This case was published after the casebook. It addresses an important, and bar-tested area of the law. When we get to the Motion for New Trial, we will note that one of the various grounds for that motion is insufficient evidence for the jury's verdict—which overlaps with the FRCP 50 Motion for Judgment. The pagination below is not that of the the original opinion.

The underlying litigation involved ConAgra's attempt to enforce its patent for "A Method for Browning Precooked Whole Muscle Meat Products." Respondent ConAgra warned companies that sold equipment and processes for browning precooked meats of its intent to protect its rights under its patent for that process. Petitioner Unitherm—whose president had invented the process six years before ConAgra filed its patent application—filed suit in an Oklahoma federal court. The complaint sought a declaration that ConAgra's patent was invalid and unenforceable. It alleged that ConAgra had violated the Sherman Act via its attempt to enforce a patent obtained by fraud on the Patent and Trademark Office.

*Court's Opinion:* Justice THOMAS delivered the opinion of the Court.

Ordinarily, a party in a civil jury trial that believes the evidence is legally insufficient to support an adverse jury verdict will seek a judgment as a matter of law by filing a motion pursuant to Federal Rule of Civil Procedure 50(a) before submission of the case to the jury, and then (if the Rule 50(a) motion is not granted and the jury subsequently decides against that party) a motion pursuant to Rule 50(b). In this case, however, the respondent filed a Rule 50(a) motion before the verdict, but did not file a Rule 50(b) motion after the verdict. Nor did respondent request a new trial under Rule 59. The Court of Appeals nevertheless proceeded to review the sufficiency of the evidence and, upon a finding that the evidence was insufficient, remanded the case for a new trial. Because our cases addressing the requirements of Rule 50 compel a contrary result, we reverse.

I

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After dismissing Jennie-O for lack of antitrust standing, the District Court allowed Unitherm's \* \* \* claim to proceed to trial. Prior to the court's submission of the case to the jury, ConAgra moved for a directed verdict under Rule 50(a) based on legal insufficiency of the evidence. The District Court denied that motion.<sup>1</sup> The jury returned a verdict for Unitherm, and ConAgra neither renewed its motion for judgment as a matter of law pursuant to Rule 50(b), nor moved for a new trial on antitrust liability pursuant to Rule 59.

On appeal \* \* \* , ConAgra maintained that there was insufficient evidence to sustain the

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<sup>1</sup> \* \* \* ("A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion").

jury's \* \* \* verdict. \* \* \* Under Tenth Circuit law, a party that has failed to file a postverdict motion challenging the sufficiency of the evidence may nonetheless raise such a claim on appeal, so long as that party filed a Rule 50(a) motion prior to submission of the case to the jury. Notably, the only available relief in such a circumstance is a new trial. Freed to examine the sufficiency of the evidence, the Federal Circuit concluded that, although Unitherm had presented sufficient evidence to support a determination that ConAgra had attempted to enforce a patent that it had obtained through fraud on the PTO, 375 F.3d, at 1362, Unitherm had failed to present evidence sufficient to support the remaining elements of its antitrust claim ("Unitherm failed to present any economic evidence capable of sustaining its asserted relevant antitrust market, and little to support any other aspect of its Section 2 claim"). Accordingly, it vacated the jury's judgment in favor of Unitherm and remanded for a new trial. We granted certiorari, and now reverse.

## II

Federal Rule of Civil Procedure 50 sets forth the procedural requirements for challenging the sufficiency of the evidence in a civil jury trial and establishes two stages for such challenges—prior to submission of the case to the jury, and after the verdict and entry of judgment. Rule 50(a) allows a party to challenge the sufficiency of the evidence prior to submission of the case to the jury, and authorizes the District Court to grant such motions at the court's discretion \* \* \* .

This Court has addressed the implications of a party's failure to file a postverdict motion under Rule 50(b) on several occasions and in a variety of procedural contexts. \* \* \* A postverdict motion is necessary [before one can appeal] because "[d]etermination of whether a new trial should be granted [under Rule 59] or a judgment entered under Rule 50(b) calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart." Moreover, the "requirement of a timely application for judgment after verdict is not an idle motion" because it "is ... an essential part of the rule, firmly grounded in principles of fairness."

The foregoing authorities lead us to reverse the judgment below. Respondent correctly points out that these authorities address whether an appellate court may enter judgment in the absence of a postverdict motion, as opposed to whether an appellate court may order a new trial (as the Federal Circuit did here). But this distinction is immaterial. This Court's observations about the necessity of a postverdict motion under Rule 50(b), and the benefits of the district court's input at that stage, apply with equal force whether a party is seeking judgment as a matter of law or simply a new trial.

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The text of Rule 50(b) confirms that respondent's preverdict Rule 50(a) motion did not present the District Court with the option of ordering a new trial. That text [FRCP 50a] provides that a district court may only order a new trial on the basis of issues raised in a preverdict Rule 50(a) motion when "ruling on a renewed motion" under Rule 50(b). Accordingly, even if the District Court was inclined to grant a new trial on the basis of arguments raised in respondent's preverdict motion, it was without the power to do so under Rule 50(b) absent a postverdict motion pursuant to that Rule. Consequently, the Court of Appeals was similarly powerless.

Similarly, the text and application of Rule 50(a) support our determination that respondent may not challenge the sufficiency of the evidence on appeal on the basis of the

District Court's denial of its Rule 50(a) motion. The Rule provides that "the court may determine" that "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party on [a given] issue," and "*may* grant a motion for judgment as a matter of law against that party ... ." (Emphasis added.) Thus, while a district court is permitted to enter judgment as a matter of law when it concludes that the evidence is legally insufficient, it is not required to do so. To the contrary, the district courts are, if anything, encouraged to submit the case to the jury, rather than granting such motions. As Wright and Miller explain:

Even at the close of all the evidence it may be desirable to refrain from granting a motion for judgment as a matter of law despite the fact that it would be possible for the district court to do so. If judgment as a matter of law is granted and the appellate court holds that the evidence in fact was sufficient to go to the jury, an entire new trial must be had. If, on the other hand, the trial court submits the case to the jury, though it thinks the evidence insufficient, final determination of the case is expedited greatly. If the jury agrees with the court's appraisal of the evidence, and returns a verdict for the party who moved for judgment as a matter of law, the case is at an end. If the jury brings in a different verdict, the trial court can grant a renewed motion for judgment as a matter of law. Then if the appellate court holds that the trial court was in error in its appraisal of the evidence, it can reverse and order judgment on the verdict of the jury, without any need for a new trial. For this reason the appellate courts repeatedly have said that it usually is desirable to take a verdict, and then pass on the sufficiency of the evidence on a post-verdict motion.

Thus, the District Court's denial of respondent's preverdict motion cannot form the basis of respondent's appeal, because the denial of that motion was not error. It was merely an exercise of the District Court's discretion, in accordance with the text of the Rule and the accepted practice of permitting the jury to make an initial judgment about the sufficiency of the evidence. The only error here was counsel's failure to file a postverdict motion pursuant to Rule 50(b).

For the foregoing reasons, we hold that since respondent failed to renew its preverdict motion as specified in Rule 50(b), there was no basis for review of respondent's sufficiency of the evidence challenge in the Court of Appeals. The judgment of the Court of Appeals is reversed.