

WASHINGTON CASE UPDATE

Déjà Vu: Order for New Trial on General Damages Overturned

case in point...

From the desk of Kyle D. Riley: In a trial to determine damages, can the trial court order a new trial on the sole issue of general damages? Read on to see how the Washington Court of Appeals ruled in this case.

Claims Pointer: In the following case, the jury awarded all of the plaintiff's special (economic) damages, but awarded nothing in general (noneconomic) damages. When the plaintiff asked for a new trial, the court granted it. In the trial court's view, the jury could not logically fail to award pain and suffering if they believed that the plaintiff's injuries were caused by the accident. The Washington Court of Appeals held that when a jury's award of damages is inconsistent, a trial court may order a new trial. It explained that when an order for a new trial is appealed, appellate courts determine whether the court abused its discretion, not whether the jury's decision made sense. The Court of Appeals also held that a new trial on damages cannot be limited to the amount of general damages. The new trial must be for both general and special damages.

Bechard v. Dalrymple, No. 32462-1-III, Washington Court of Appeals, Division III (August 25, 2015) (unpublished)

In 2007, Joyce Dalrymple was involved in an automobile accident when her vehicle collided with the vehicle driven by Linda Bechard. Randy Bechard was in the passenger seat. Mr. Bechard didn't seek medical treatment until 8 days after the accident. The Bechards filed suit around three years after the accident. Mr. Bechard incurred \$57,545.40 in medical costs by the time of trial. Mr. Dalrymple did not contest liability, but challenged the amount of Mr. Bechard's damages.

The case was tried to a jury. The Bechards' expert testified that Mr. Bechard's condition was permanent and caused by the accident even though Mr. Bechard's treating physicians did not report any injury due to the collision. Ms. Dalrymple's expert could not find a structural cause of Mr. Bechard's injury and testified that not all of Mr. Bechard's treatment was necessary. The jury returned an award of \$57,545.40—the entire amount that the Bechards claimed in special damages—but nothing for future medical costs or general damages.

Mr. Bechard moved for a new trial for the court to add to the award. The trial court ordered a new trial on the sole issue of general damages. Ms. Dalrymple asked the court to modify the award to add \$25,000 to \$35,000 in general damages. The trial court denied Ms. Dalrymple's motion, entered a judgment in favor of the Bechards for special damages, and ordered a new trial on the issue of general damages. Ms. Dalrymple appealed.

On appeal to the Washington Court of Appeals, Ms. Dalrymple argued that the new trial was unjustified because the jury's award of special damages was consistent with its award of no general damages.

She contended that the jury could have believed that evaluation and treatment were necessary up until trial, but at the same time believe that the accident did not cause any injuries. The Court acknowledged that Ms. Dalrymple's theory could be correct, and that if the jury's award were on appeal, it would uphold that award. However, the Court explained that the trial court's order for a new trial was on appeal, not the award. Therefore, the Court's duty was to determine whether the trial court abused its discretion. The Court of Appeals held that the trial court did not abuse its discretion, because an equally plausible theory for the jury's decision was that they gave an illogically inconsistent award.

Even though the Court upheld the order for a new trial, the Court reversed the trial court's ruling that the new trial would only address the issue of general damages. The Court explained that triable issues can be separated, but only if they do not prejudice any of the parties. In this case, the Court held that separation of general and special damages would prejudice Ms. Dalrymple because the new jury would be told that special damages had been awarded, meaning that the jury would be left to assume that Mr. Bechard's injuries were caused by the accident. The Court held that the new jury would have to decide for themselves the cause of Mr. Bechard's injuries. The Court affirmed the order for a new trial, but reversed the order that the new trial be only on the issue of general damages.



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