

# OREGON LAW UPDATE

## Economic and Noneconomic Damages? Same Jurors Must Agree on Both

case in point ...

**From the Desk of Jeff Eberhard: In this case the Oregon Court of Appeals held that the same jurors must agree with the amount of economic and noneconomic damages awarded to a prevailing party.**

**Claims Pointer: Defendants should be aware that a jury verdict may be voided if the same majority of jurors did not agree on both the amount of economic and noneconomic damages to be awarded to a plaintiff. Defense attorneys must be careful in polling jurors to ensure that each juror is in agreement with each portion of the award.**

Congdon v. Berg, in the Court of Appeals of the State of Oregon, A147139 (April 3, 2013).

Nancy Congdon was injured in a collision with an uninsured driver. She filed an uninsured motorist claim against her insurer, Farmers. The case went to trial, with the jury awarding approximately \$48,000 in economic damages and \$275,000 in noneconomic damages. There was some uncertainty that the same nine jurors (the Oregon Constitution requires a three-fourths majority verdict in civil cases) had agreed on both economic and noneconomic damages. Farmers asked to poll the jury. By a show of hands vote, nine jurors agreed with the economic damages and nine jurors agreed with the noneconomic damages. However, they were not the same nine jurors. The trial court denied Farmers' request to poll the jurors, individually, explaining that it was not certain that the same nine jurors needed to agree on the different types of damages.

On appeal, Farmers argued that the same jurors must agree on both economic and noneconomic damages. The Court of Appeals agreed, holding that under the standard established in Sandford v. Chevrolet Division of General Motors, 292 Or 590 (1982), "when there is a twelve-person jury, the same nine or more jurors must agree, in full, on every interdependent element of a particular claim against a particular defendant." The Court

accepted Farmers' argument that economic and noneconomic damages are sufficiently interrelated to qualify as interdependent elements of a particular claim.

The trial court's failure to poll the jurors individually after a showing of hands, therefore, was not harmless error. That method of jury polling failed to establish whether the same jurors agreed with both the economic damages and the noneconomic damages. Accordingly, the jury's verdict was invalid and the case was remanded back to the trial court.



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