

FILED  
Court of Appeals  
Division I  
State of Washington  
11/4/2020 3:32 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/5/2020  
BY SUSAN L. CARLSON  
CLERK

99203-7

No. 81041-3-1

**COURT OF APPEALS,  
DIVISION I  
OF THE STATE OF WASHINGTON**

---

**REBEKAH L. HART, individually,**

**Appellant,**

**v.**

**EMILY PRATHER and "JOHN DOE" PRATHER, individually and the marital community comprised thereof; PARKER J. KNAUER, individually; STEVEN KNAUER and PAMILA KNAUER, individually and the marital community comprised thereof; BRAYDEN STANTON and "JANE DOE" STANTON, individually and the marital community comprised thereof; TODD EVANS and "JANE DOE" EVANS, individually and the marital community comprised thereof; ERIC NELSON and "JANE DOE" NELSON, individually and the marital community comprised thereof; DAVID W. BARKER and "JANE DOE" BARKER, individually and the marital community comprised thereof; and BRITTANY POWELL, individually,**

**Respondents.**

---

**PETITION FOR REVIEW**

---

BEN F. BARCUS, WSBA# 15576  
PAUL A. LINDENMUTH, WSBA #15817  
*LAW OFFICES OF BEN F. BARCUS  
& ASSOCIATES, P.L.L.C.*  
Attorneys for Appellant  
4303 Ruston Way  
Tacoma, Washington 98402  
(253) 752-4444

**Table of Contents**

**I. IDENTITY OF PETITIONER..... 1**

**II. COURT OF APPEALS DECISION ..... 1**

**III. INTRODUCTION TO ISSUES PRESENTED FOR REVIEW ..... 1**

**IV. ISSUES ..... 5**

**V. STATEMENT OF THE CASE..... 5**

    A. Petitioner’s Accidents and Her “Fault-Free” Status..... 5

    B. Facts Relating to the Verdict Form ..... 7

    C. The Court of Appeals Decision..... 8

**VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED..... 10**

    1 The Court of Appeals’ Novel Interpretation of RCW 4.22.070(1)(b) is Unsupported by the Case Law and the Rules of Statutory Construction.

    2 The Court Failed to Properly Analyze the Errors Within the Jury Verdict Form Relating (1) to the Inclusion of Brittany Powell’s Accident on the Verdict Form in the “Fault” Allocation Question, and (2) The inconsistency Created by The Jurors' Determination that Injuries Were "Divisible," While at the Same Time Awarding Future Damages. ... 16

**CONCLUSION ..... 19**

**TABLE OF AUTHORITIES**

**Cases**

*Cox v. Spangler*, 141 Wn. 2d 431, 5 P. 3d 1265 (2000) ..... 15

*Espinoza v. American Commerce Ins. Co.*, 184 Wn. App. 176, 194-95, 336 P.3d 115 (2014).... 16

*Estate of Stalkup v. Vancouver Clinic, Inc.*, 145 Wn. App. 572, 586, 187 P.3d 291 (2008)..... 16

*In Re: Parentage of C.A.M.A.*, 154 Wn. 2d 52, 60, 109 P. 3d 405 (2005) ..... 13

*In Re: Custody of Smith*, 137 Wn. 2d 1, 12, 969 P. 2d 21 (1998)..... 13

*In Re: Marriage of Worthley*, 198 Wn. App. 419, 425, 393 P. 3d 859 (2017)..... 12

*Smelser v. Paul*, 181 Wn. 2d 648, 657, 398 P.3d 1086 (2017)..... 17

*Smith v. Rodene*, 69 Wn. 2d 482, 484, 418 P.2d 741 (1966) ..... 12, 14

*Thiringer v. Am. Motors Ins.*, 92 Wn. 2d 215, 588 P.2d 191 (1978)..... 13

*Wash. DOT v. Mullen Trucking, 2005, LTD*, 194 Wn. 2d 526, 535, 451 P. 2d 312 (2019)..... 17

*Washburn v. Beatt Equipment Co.*, 120 Wn. 2d 246, 294, 840 P. 2d 860 (1992). ..... 11

**Statutes**

RCW 4.22.015 ..... 3, 5, 7 8, 10

RCW 4.22.030 ..... 15

RCW 4.22.030 or 4.22.070 ..... 15

RCW 4.22.040 -.060 ..... 13

RCW 4.22.070(1)..... 10

RCW 4.22.070(1)(b)..... 2, 4, 5, 7, 8, 10, 11, 15

RCW 4.22.070(1)..... 17

**Other Authorities**

C. Peck, *Washington's Partial Reject and Modification of Common Law Rule of Joint and Several Liability*, 62 *Wash. L. Rev.* 233, 234-35 (1987) ..... 1

Professor Gregory C. Sisk's law review article, "*Interpretation of Statutory Modification of Joint and Several Liability: Resisting The Deconstruction of Tort Reform*," 16 *Puget Sound L. Rev.* 1, 43, (1992)..... 11

## **I. IDENTITY OF PETITIONER**

PETITIONER, Rebekah L. Hart, the plaintiff below, seeks review of the Court of Appeals decision affirming the Trial Court's rulings relating to the application of RCW 4.22.070.

## **II. COURT OF APPEALS DECISION**

The Court of Appeals decision was filed on August 24, 2020. Petitioner's Motion for Reconsideration was denied on October 5, 2020. The Court of Appeals' slip opinion is attached hereto as Appendix A1 to A26. The Court of Appeals Order Denying the Motion for Reconsideration is attached hereto as Appendix A27-A28.

## **III. INTRODUCTION TO ISSUES PRESENTED FOR REVIEW**

As observed by one commentator in 1986, the Washington legislature adopted tort reform legislation, after an intense lobbying effort by the insurance industry, and other special groups, based on the arguably misguided belief that such legislation would make insurance more affordable and available. See, C. Peck, *Washington's Partial Reject and Modification of Common Law Rule of Joint and Several Liability*, 62 *Wash. L. Rev.* 233, 234-35 (1987). The "centerpiece" of the 1986 tort reform efforts was RCW 4.22.070, which provides that several, or a proportionate liability, was intended to be a new "general rule," in substitution for previously recognized joint and several liability principles.

See, *Tegman v. Accident and Medical Investigations, Inc.*, 150 Wn. 2d 102, 109, 75 P. 3d 497 (2003). At issue here is a core portion of that statute, RCW 4.22.070(1)(b), which newly created joint and several liability in cases where the plaintiff is deemed to be "fault-free" and a judgment is entered against one or more defendants.

RCW 4.22.070 was intended to act as a "substitution" for previously recognized common law "joint and several" liability principles; since its inception RCW 4.22.070(1)(b) has been recognized as consisting of only two elements, which have been applied by Washington's appellate courts in a straightforward and consistent fashion:

- (1) The plaintiff is determined to be "fault-free," and
- (2) The judgment has been entered against multiple defendant tortfeasors. See, e.g., *Kottler v. State*, 136 Wn. 2d 437, 446-47, 9638 P. 2d 834 (1998); *Washburn v. Beatt Equipment Co.*, 120 Wn. 2d 246, 294, 840 P. 2d 860 (1992).

The Court of Appeals' opinion in this case conflicts with these cases, and this longstanding interpretation. According to the Court of Appeals, such elements now only apply when the fact pattern involves a single accident with multiple defendants, or multiple accidents which result in "indivisible" injuries. (A6-A9)

The Courts of Appeals' statutory interpretation is plainly wrong and contrary to the clear and plain language of the statute at issue. Further, the Court of Appeals' decision is problematic because it approved a verdict form that allowed the jurors to allocate "fault" to a party who has previously been dismissed because they had engaged in no action constituting "fault" within the meaning of RCW 4.22.015, see, *Smelser v. Paul*, 188 Wn. 2d 648, 657, 398 P. 3d 1086 (2017), conflicting with the well-recognized rule in Washington that "fault" cannot be allocated to that non-negligent party. See, *Joyce v. Depart. of Corr.*, 116 Wn. App. 569, 594, 75 P. 3d 548 (2003), reversed in part on other grounds, 155 Wn. 2d 306, 119 P. 3d 825 (2005).

Over the objection of all parties, the Trial Court sua sponte, during the course of deliberations, modified the verdict form to permit an allocation of fault to an accident, caused by a previously dismissed defendant who the trial court had determined had, as a matter of law, engaged in no actionable wrongdoing.

According to the Court of Appeals, such actions were not erroneous, because the verdict form allowed for an allocation of damages based on proximate cause of injuries, regardless of the absence of any "fault" within the meaning of RCW 4.22.015, which under *Smelser*, is a

prerequisite for an allocation of fault under RCW 4.22.070. (A9-A10) The modified verdict form at Question No. 12, provided:

"Assume 100 percent represents the total and the combined **fault** for collisions that proximately caused the plaintiff's injuries and/or damages. What percentage of the 100 percent is attributable to the negligence or collision of each of the following...

(Emphasis added.)

To the collision of March 22, 2014.<sup>1</sup> (A copy of the verdict form is attached hereto as Appendix A29-A32).

The Court of Appeals decision, which alters the elements of RCW 4.22.070(1)(b), in an unprecedented and unreasonable manner, conflicts with prior Supreme Court precedent and involves a matter of substantial public concern within the meaning of RAP 13.4(b)(1), (4). The same is true with respect to the Court of Appeals unprecedented willingness to allow for an allocation of fault to a party who it had previously dismissed due to insufficient evidence of "fault." This also conflicts with Supreme Court precedent and involves a matter of substantial public concern as to what is the meaning of RAP 13.4(b)(1), (4).

---

<sup>1</sup> The collision of March 22, 2014 related to an accident involving a vehicle being driven by former defendant, Brittany Powell, who had earlier been dismissed by the Trial Court as a defendant due to insufficient evidence of negligence "as a matter of law." The fact that the verdict form allocated to the "collision of March 22, 2014, as opposed to Brittany Powell as an individual, is a distinction without a difference and unimportant to the ultimate analysis in this case. They are factually the exact same thing.



#### IV. ISSUES

1. Did the Court of Appeals misapply and misinterpret RCW 4.22.070(1)(b) by limiting its application to cases involving a single accident and multiple defendants, or multiple accidents, but only if they are “indivisible” injuries?

2. Whether entry of judgment “severally” against multiple negligent defendants in a case where the plaintiff was fault-free contradicts RCW 4.22.070(b)(1)?

3. Whether a trial court can, and over the objection of all parties, revise the verdict form during deliberations in a manner which permitted the jury to allocate fault to a party it had previously determined had not engaged in an any “fault” within the meaning of RCW 4.22.015?

4. Can a dismissed defendant, who the Court ruled engaged in no action falling within the definition of “fault” in RCW 4.22.015, nevertheless be allocated “fault” under RCW 4.22.070’s allocation scheme, under the theory that their non-wrongful actions were a proximate cause of injury?

#### V. STATEMENT OF THE CASE

##### A. **Petitioner’s Accidents and Her “Fault-Free” Status.**

This lawsuit arises out of four separate automobile accidents involving the Plaintiff. The first and third accidents occurred at the same location, on a freeway overpass in Gig Harbor, Washington. RP 719,765;1524-28. In the third accident, defendant Barker admitted liability, and at trial, the jury determined a liability dispute on the first accident in favor of the plaintiff, finding defendants Prather and Knauer liable for that accident. RP 2559-2562, 4095; CP 786-89. In the second accident, plaintiff was found by the trial court, as a matter of law to be "fault free." (Supp CP – Order of January 3, 2014) RP 4095-96. On the fourth accident, which the Petitioner reluctantly brought suit on in response to a potential empty chair defense, the trial court granted a pre-verdict judgment as a matter of law, finding insufficient proof of any negligence on the part of the driver in that accident – Brittany Powell. RP 4018; CP 783-85, 989-991, 2393. Plaintiff was a passenger so could not be at fault.

Thus, by way of admission, court ruling and/or jury verdict, Petitioner was, in all instances, entirely "fault-free." At the close of the evidence, the trial court found as a matter of law that the plaintiff was "fault-free" with respect to not only the April 7, 2013 accident but also the December 22, 2009, and March 22, 2014 accidents. An instruction on comparative fault **was not** given to the jury, which returned a Verdict in plaintiff's favor (RP 4-4438) against defendants

Prather and Knauer, Stanton and Evans, and Barker. CP 2559-2562. Despite the fact that plaintiff was fault-free, judgments were entered against the multiple defendants severally, contrary to RCW 4.22.070(1)(b). RP 4446-48; CP 2731-2741.

**B. Facts Relating to the Verdict Form**

The court had previously found as a matter of law that there were no other potential "empty chairs" who could be subject to a fault allocation under RCW 4.22.070. As Defendant Powell was found to have engaged in no act of "negligence" and dismissed from the case prior to it being given to the jury, she could not be subject to a "fault" allocation under the terms of RCW 4.22.070 because she engaged in no action falling within the definition of "fault" set forth within RCW 4.22.015.

The trial court nevertheless, during deliberations, *sua sponte* submitted to the jurors a "revised" Verdict Form which for the first time included dismissed defendant Brittany Powell's accident in the allocation section. (A31-32) CP 2496-2500, 2559-2562; RP 4297-98. Petitioner objected to the trial court's *sua sponte* decision to revise the Verdict Form and it was unsupported by any request by the defense, who had previously conceded that, given her dismissal, Ms. Powell could not be subject to a fault allocation within the Verdict Form. RP of 2/20/18 pages; 4297-98.

The jurors allocated "20 percent fault" to Brittany Powell on the revised verdict form. The trial court then effectively treated dismissed Defendant Powell, who had done nothing wrong, as if she were an "empty chair" in its several judgment against the other defendants.

**C. The Court of Appeals Decision**

The Court of Appeals affirmed in all respects the trial court's decisions. The Court of Appeals rested its decision on a novel interpretation of RCW 4.22.070(1)(b), which can be distilled to a single proposition, that the terms of the statute, as it relates to "... their proportionate shares of [claimant's] total damage" "... must mean that joint liability applies only to injuries caused by *an* accident where more than one defendant is liable." (A8) The Court of Appeals went on to explain that according to its analysis, that the joint and several liability derived from RCW 4.22.070(1)(b) can only exist when there is a single accident caused by more than one defendant, or there must be multiple accidents resulting in an indivisible injury. (A8-A9).

The Appellate Court further rejected the notion that under the statutory scheme of which RCW 4.22.070(b)(1) is a part, that a party cannot be subject to an allocation, unless "fault" within the meaning of RCW 4.22.015 has been established. According to the Court of Appeals, even in the absence of "fault," under the terms of RCW 4.22.070, a party

can be allocated fault so long as their non-negligent actions proximately caused a party's injuries and/or damages.

Additionally, the Court of Appeals summarily rejected the notion that the verdict form was irreconcilably inconsistent because, even though the jury failed to find the injuries indivisible, it nevertheless awarded future damages - despite the fact that the last of the four accidents in question could not result in the imposition of any liability.

Petitioner substantially quarrels with the Appellate Court's veiled suggestion at Page 2 of its opinion that there was a substantial gap between the first two accidents. (A-2) Such a suggestion is unsupported by the record, which undisputedly established that on the date of the first accident itself, plaintiff sought medical care, and consistently thereafter, and prior to the second accident of December 22, 2009, sought out a wide variety of medical care that included, but was not limited to, 15 visits to her primary care doctor (CP 1130-1132), 25 physical therapy visits, 38 massage therapy sessions, and almost 50 chiropractic visits. (CP 1130-1134). Indeed, the day before the second collision – December 21, 2019, Ms. Hart was still complaining of ongoing symptoms to her chiropractor. (CP 1134).

In fact, it was and is undisputed that from the date of the first collision until time of trial, plaintiff continuously was symptomatic from

conditions which first appeared on March 1, 2009 when she was 17 years of age. Beyond acute cuts, bruises and strains, Petitioner from the date of the first accident forward, suffered an upper cervical spine injury that has caused her chronic debilitating migraines.

## **VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED**

### **1. The Court of Appeals' Novel Interpretation of RCW 4.22.070(1)(b) is Unsupported by the Case Law and the Rules of Statutory Construction.**

The Court of Appeals and the trial Court's misinterpretation of RCW 4.22.070(1) served to defeat the joint and several liability that the Legislature mandated under the statute's plain language, as consistently interpreted by Washington courts.

The Court of Appeals correctly pointed out that "ultimately you must harmonize related statutory provisions to carry out a consistent scheme that maintains the statute's integrity," citing to, *King County v. King County Water Dist. No. 20*, 194 Wn. 2d 453 P. 3d 681 (2019), but its analysis failed to do so. (A-7) Statutes pertinent to this appeal are RCW 4.22.015; RCW 4.22.030 and RCW 4.22.070, which are set forth in the Appendix at pages A33 to A35.

RCW 4.22.030, provides:

**Except as otherwise provided in RCW 4.22.070**, if more than one person is liable to a claimant on an indivisible claim for the same injury, death, or

harm, the liability of such person shall be joint and several. (Emphasis added). (A33)

RCW 4.22.070 has no similar language. Nearly since its enactment, RCW 4.22.070(1)(b) has been recognized as providing joint and several liability when there is a fault-free plaintiff and judgment has been entered against multiple defendant tortfeasors. See, *Washburn v. Beatt Equipment Co.*, 120 Wn. 2d 246, 294, 840 P. 2d 860 (1992).

The *Kottler* case, relied upon by the Court of Appeals to recognize RCW 4.22.070(b)(1), only has two elements: (1) "where plaintiff is fault-free," and, (2) the "Court entered judgment against two or more defendants," joint and several liability applies. 136 Wn.2d at 446. *Kottler* in no way alters the basic elements of RCW 4.22.070(1)(b). Professor Gregory C. Sisk's law review article, "*Interpretation of Statutory Modification of Joint and Several Liability: Resisting The Deconstruction of Tort Reform*," 16 Puget Sound L. Rev. 1, 43, (1992), provides the following analysis of the meaning of RCW 4.22.070(b)(1):

Under Paragraph (1)(b), if the plaintiff is determined to be without fault, the defendants found at fault by judgment remain jointly and severally liable for the sum of their proportionate shares of the claimant(s) total damages. Each defendant thus, is fully responsible for its own share of the damages and for the proportionate shares of every other entity which have been **joined as a defendant to and against whom a legitimate judgment of fault is entered.**

(Emphasis added and in original) (Footnotes omitted)

The Court of Appeals nonetheless interpreted *Kottler* and terms "the sum of their proportionate liability" to mean that joint and several liability applies only to injuries caused by a single accident, where more than one defendant is liable or in cases of "indivisible" injury. This interpretation is unsupported by statutory language or any prior case law. No scholarly commentator has ever taken such a position. Indeed, the Appellate Court's interpretation of the clause, "the sum of their proportionate shares," would essentially eviscerate the statutory purposes creating joint and several liability when there is a fault-free plaintiff and a judgment is entered against one or more defendants.

Under the appellate court's formulation, which essentially removes the plural from the statutory term "shares," any time there is a judgment against more than one defendant it can only be for the "sum of their proportionate liability." That is nothing more than several liability – which the very statute in question disavows. That is not what the statute provides for and would be contrary to its very purposes. The case of *Smith v. Rodene*, 69 Wn. 2d 482, 484, 418, P. 2d 741 (1969) does not bolster the Court of Appeals' conclusion. (A8 n.6)

It is a well-recognized canon of statutory construction that under the guise of interpreting a statute, the Court cannot read into the statute that which they may believe the legislature has omitted either intentionally



or inadvertently. See, *In Re: Marriage of Worthley*, 198 Wn. App. 419, 425, 393 P. 3d 859 (2017), citing to, *In Re: Custody of Smith*, 137 Wn. 2d 1, 12, 969 P. 2d 21 (1998). When a statute is unambiguous, and the words of the statute are clear and unequivocal, Courts are required to assume the legislature meant exactly what they said and apply the statute as written. *Id.* Courts cannot amend statutes by judicial construction, or re-write the statutes to avoid difficulty in construing and applying them. *Id.* Citing to *In Re: Parentage of C.A.M.A.*, 154 Wn. 2d 52, 60, 109 P. 3d 405 (2005).

It is possible that the Appellate Court's formulation of its statutory construction analysis was motivated by its concern that application of the plain meaning of the statute would result in the harsh consequences of a tortfeasor being held liable for injuries for which their contribution, at best, was only slight. But such a scenario is substantially ameliorated by the fact that the defendants who are found to be jointly and severally liable under the terms of this statute can seek contribution from one another under another part of the statutory scheme. See, RCW 4.22.040 -.060.

It is also contrary to the strong public policy that innocent victims of third-party tortfeasors should be fully compensated for their injuries. *Thiringer v. Am. Motors Ins.*, 92 Wn. 2d 215, 588 P.2d 191 (1978). Here, the fact the jury found injuries were divisible, i.e., subject to allocation, does not change the fact that each defendant against whom judgment was

entered contributed, at least in part, to a chronic partially debilitating injury that warranted an award of substantial past and future damages.

It was within the province of the Legislature to impose joint and several liability to ensure an innocent victim (fault-free) of multiple torts be fully compensated, from those who, in any way, contributed to her injury through tortious conduct.

Additionally, the facts set forth within *Smith v. Rodene*, 69 Wn. 2d 482, 484, 418 P.2d 741 (1966) relied upon by the Court of Appeals, can rarely, if ever occur. In *Smith v. Rodene*, the plaintiff joined two automobile accidents in a single lawsuit, even though the accidents and related injuries “were separated by distance and time causing separate harms.” A8, n.6. The Supreme Court found under these distinguishable facts there could be no joint and several liability.

Absent some factual basis for an assertion that either liabilities and/or damages overlap, the two claims unlikely would ever be joined together in one lawsuit because they lack a common core of facts that could even warrant a "permissive joinder" under the terms of CR 20. Should a plaintiff attempt to join separate accidents that resulted in two entirely different injuries into one lawsuit, consolidation would be denied and/or a motion to sever the causes of action would be granted. In other words, the potential for the harsh consequences the Court of Appeals was

attempting to avoid, are more imagined than real. Here, albeit as a percentage, each defendant at least in part contributed to the same chronic injury.

As it is, there is no rule within the State of Washington that joint and several liability cannot be applied where there have been two accidents otherwise separated by distance or time, particularly if there is an overlap of injury. (A-8, n.6) *Cox v. Spangler*, 141 Wn. 2d 431, 5 P. 3d 1265 (2000) (indivisible injury despite 6 months between accidents). Nor is there anything within the language of RCW 4.22.070(1)(b) which suggests that there can be joint and several liability only when there is an "indivisible injury."

Indeed, application of the rules of statutory construction results in the opposite conclusion. By its terms, RCW 4.22.030 addresses indivisible injury, and preserves joint and several liability under the circumstances where an "indivisible" injury occurs. By its terms, RCW 4.22.030 limits the application of the "indivisible injury" doctrine to facts consistent with RCW 4.22.070. In other words, in order to have joint and several liability under an indivisible injury theory, RCW 4.22.070 must be taken into consideration. But there is nothing in the language of either RCW 4.22.030 or 4.22.070 which indicates that in order for there to be joint and several liability under RCW 4.22.070(1)(b) there also has to

be a finding of "indivisible injury," or that RCW 4.22.030 must even be considered. To hold otherwise is to read something into these statutes that does not exist.

In sum, the Appellate Court's rationale relating to its interpretation of RCW 4.22.070 cannot be sustained. It is contrary to the plain language of the statute, and is a *defacto* inclusion of terms that the legislature did not include anywhere within the statutory scheme.

**2. The Court Failed to Properly Analyze the Errors Within the Jury Verdict Form Relating (1) to the Inclusion of Brittany Powell's Accident on the Verdict Form in the "Fault" Allocation Question, and (2) The inconsistency Created by The Jurors' Determination that Injuries Were "Divisible," While at the Same Time Awarding Future Damages.**

The Court's Opinion also overlooked the tortured history of the verdict form ultimately signed off by the Presiding Juror (App. Br. 27-28), which resulted in an irreconcilably inconsistent verdict that prejudiced the plaintiff. An inconsistency in a verdict form can be a basis to grant a new trial as an "irregularity in the proceedings." See, *Espinoza v. American Commerce Ins. Co.*, 184 Wn. App. 176, 194-95, 336 P.3d 115 (2014); CR 59(a)(1). If a verdict form contains irreconcilable inconsistencies, a motion for a new trial should be granted. *Id.* At 196; *Estate of Stalkup v. Vancouver Clinic, Inc.*, 145 Wn. App. 572, 586, 187 P.3d 291 (2008). A verdict is deemed to be irreconcilable when it

contains contradictory answers to interrogatories making the jury's resolution of the ultimate issue impossible to determine. *Id.*

Question 12 as modified in the revised verdict form, does not limit the juror's consideration of the Powell accident, only the question of whether any injuries were proximately caused by that event, but allows allocation based on "the total of combined **fault** for the collisions..." (Emphasis added.)

In other words, the question as asked, does not limit the Powell accident to a question solely of damages, but also allowed the jury to consider it in its allocation of **fault**. We simply do not know if the jury allocated "fault" to Ms. Powell, even though she was a dismissed defendant, or if it considered the March 22, 2014 accident solely in analyzing the total amount of damages suffered by the plaintiff.

As acknowledged by the Court, a party who is not negligent cannot be found to be "at fault" under the terms of RCW 4.22.070(1). (A-11) See, *Smelser v. Paul*, 181 Wn. 2d 648, 657, 398 P.3d 1086 (2017); *Wash. DOT v. Mullen Trucking, 2005, LTD*, 194 Wn. 2d 526, 535, 451 P. 2d 312 (2019) ("the legal proposition of *Smelser* [is] that there must be an actionable duty in tort before fault allocation is allowed"). Here, because of the dual nature of Question No. 12, we simply cannot know what the jury did with respect to the Powell accident, nor does the law allow for an

allocation without “fault” based solely on proximate cause. See, *Smelser v. Paul*, supra (remanding case for entry of full judgment solely against negligent party, even though jury found non-negligent party be a proximate cause of injury).

Such an inconsistency was not "saved" by Court's Instruction No. 25, set forth in full at Page 10 of the Court's Slip Opinion. (A-10) As far as we know, the jurors did follow Instruction 25 and reduced the total amount of damages awarded to the plaintiff based on its consideration of the Powell accident. Unfortunately, given the ambiguity within Question 12, *sua sponte* revised by the Trial Court, we simply cannot tell whether the jury not only reduced damages as allowed for under Instruction 25, then also further reduced the amount awarded to the plaintiff by way of a 20% fault allocation to the Powell accident. In other words, there is no way of telling whether or not the plaintiff's damages were essentially subject to a double reduction.

Further, even if we assume arguendo that somehow Question No. 12 within the revised verdict from can be saved from "irreconcilable inconsistency," nevertheless the entire approach of allowing for an allocation based on proximate cause versus fault is itself legally faulty. As *Smelser* teaches, before an allocation can occur, at a minimum, all elements of negligence must be established: (1) breach of duty, (2)

proximate cause, and (3) damages before an allocation can occur.

Proximate cause alone is not enough.

Finally, the Court appears to have misapprehended the inconsistency created by how the Trial Court applied the jurors' answer to Jury Verdict Question No. 11 where the jury found plaintiff's injuries not to be "indivisible" and the Award of future economic and non-economic damages in the amount of \$275,000.00 and the Trial Court's judgment against each defendant found at fault solely on a pro rata basis.

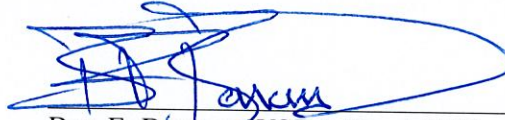
The award of future damages is inconsistent with the notion that each of the accidents for which liability could be imposed were "divisible" and limited, as the Court stated in Footnote 6 at Page 8 of the Slip Opinion, by "separated distance and time" and "separate harm." Either the jurors' finding of "divisible harm" was erroneous, or the award of future damages was erroneous, given there could be no liability for the fourth accident, upon which the jury found to be a cause of harm.

This Court should recognize that inconsistency exists and order a new trial.

### **CONCLUSION**

It is respectfully prayed the Court accept review and remand of this matter for a new trial or with direction to enter a judgment consistent with the proper application of the law.

Dated this 4<sup>th</sup> day of November, 2020.

A handwritten signature in blue ink, appearing to be "Ben F. Bæreus", written over a horizontal line.

Ben F. Bæreus, WSBA No. 15576  
Paul A. Lindenmuth, WSBA No. 15817  
Of Attorneys for Petitioner/Plaintiff



**CERTIFICATE OF SERVICE**

I certify that on the date set forth below, I caused a true and correct copy of the foregoing document to be served on the following via e-service and e-mail:

Joseph R. Kopta  
Kopta & MacPherson  
5801 Soundview Drive, #258  
Gig Harbor, WA 98335  
E: [joe@koptamacpherson.com](mailto:joe@koptamacpherson.com)

Jeffrey D. Coats  
Hollenbeck, Lancaster, Miller & Andrew  
15500 SE 30th Pl Suite 201  
Bellevue, WA 98007  
E: [jeffrey.coats@farmersinsurance.com](mailto:jeffrey.coats@farmersinsurance.com)

Karen Kay  
Lockner, Crowley, & Kay, Inc., P.S.  
524 Tacoma Avenue South  
Tacoma, WA 98402  
E: [Karen@524law.com](mailto:Karen@524law.com)

Suzanne Shaub  
Reed McClure  
1215 4th Ave #1700  
Seattle, WA 98161  
E: [sshaub@rmlaw.com](mailto:sshaub@rmlaw.com)

Timothy R. Gosselin  
Gosselin Law Office, PLLC  
1901 Jefferson Ave., Suite 304  
Tacoma, WA 98402  
E: [tim@gosselinlawoffice.com](mailto:tim@gosselinlawoffice.com)

Yvonne Benson  
Maggie E. Diefenbach  
Gordon Thomas Honeywell  
600 University Street, Suite 2100  
Seattle, WA 98101-4161  
E: [ybenson@gth-law.com](mailto:ybenson@gth-law.com)

Coreen R. Wilson  
Wieck Wilson, PLLC  
400 112<sup>th</sup> Ave. N.E., Ste 340  
Bellevue, WA 98004-5528  
E: [coreenw@wieckwilson.com](mailto:coreenw@wieckwilson.com)

Gregory S. Worden  
John T. Bender  
Lewis Brisbois Bisgaard & Smith, LLP  
1111 3<sup>rd</sup> Ave., Suite 2700  
Seattle, WA 98101  
E: [Gregory.Worde@lewisbrisbois.co](mailto:Gregory.Worde@lewisbrisbois.co)  
[John.Bender@lewisbrisbois.com](mailto:John.Bender@lewisbrisbois.com)

Nathaniel J.R. Smith  
Soha & Lang, PS  
1325 Fourth Avenue, Ste 2000  
Seattle, WA 98101  
E: [smith@sohalang.com](mailto:smith@sohalang.com)

DATED this 4 day of November, 2020, at Tacoma, Pierce County, Washington.



\_\_\_\_\_  
Thea Wescott, Paralegal  
The Law Offices of Ben F. Barcus & Associates, PLLC  
[thea@benbarcus.com](mailto:thea@benbarcus.com)

# APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

REBEKAH L. HART, individually,  
  
Appellant,

v.

EMILY PRATHER and "JOHN DOE"  
PRATHER, individually and the marital  
community comprised thereof; PARKER  
J. KNAUER, individually; STEVEN  
KNAUER and PAMILA KNAUER,  
individually and the marital community  
comprised thereof; BRAYDEN  
STANTON and "JANE DOE" STANTON,  
individually and the marital community  
comprised thereof; TODD EVANS and  
"JANE DOE" EVANS, individually and  
the marital community comprised  
thereof; and ERIC NELSON and "JANE  
DOE" NELSON, individually and the  
marital community comprised thereof;  
DAVID W. BARKER and "JANE DOE"  
BARKER, individually and the marital  
community comprised thereof,

Respondents,

BRITTANY POWELL, individually,

Defendant.

No. 81041-3-1

DIVISION ONE

UNPUBLISHED OPINION

CHUN, J. — Rebekah Hart suffered injuries from four car accidents occurring over five years. She sued various persons involved. The matter proceeded to a seven-week jury trial. The trial court dismissed one defendant

Citations and pin cites are based on the Westlaw online version of the cited material.

No. 81041-3-1/2

before sending the case to the jury, which returned a verdict for Hart. Because the jury attributed 20 percent of Hart's damages to the collision involving the dismissed defendant, the court reduced her damage award by that percentage. The court then entered judgment against the defendants severally. Hart appeals and pursues multiple claims. We affirm.

I. BACKGROUND

A. The First Accident

The first accident occurred on March 1, 2009. Emily Prather was driving the Knauer family's car, with Parker Knauer as a passenger, over a highway overpass in Gig Harbor.<sup>1</sup> While turning left, Prather collided with Hart's vehicle. Hart did not claim any injuries at the scene.

Two days later, a doctor examined Hart for injuries related to the accident. Hart complained of pain in her right knee and upper right arm. She also stated that she experienced chest pain, neck pain, increased sleepiness, and headaches, as well as pain in her left shoulder and jaw.

Several months later, Hart returned for a follow-up examination. She complained of continuing headaches that appeared to occur when the doctor applied pressure to her upper neck. The doctor recommended that she see a chiropractor who specialized in the upper cervical area. Hart began seeing such

---

<sup>1</sup> The complaint alleges, "All of Defendant Emily C. Prather's negligent acts or admissions herein were done for and on behalf of Defendants, Parker Knauer, Steven Knauer and/or Pamela Knauer, who are therefore responsible for the conduct of Defendant, Emily C. Prather, under the Doctrines of Negligent Entrustment, The Family Car Doctrine, Agency principles, or other such applicable law to be determined upon further discovery herein." Prather drove the car with Parker Knauer's permission.

a specialist in September 2009.

B. The Second Accident and this Lawsuit

Nearly ten months after the first accident, a single-car collision involving Hart occurred on December 22, 2009. Hart attended high school then with Alan Sluka and Brayden Stanton. That night, Hart, Stanton, and other high school friends went to Sluka's home where a confrontation erupted over a prank. Hart, Stanton, and their friends then went to a nearby restaurant. Sluka pursued them. When Sluka showed up, Stanton left and drove off in a truck<sup>2</sup> with Hart in the backseat to avoid any further conflict. Sluka followed.

Eric Nelson, Sluka's stepfather, left his house in his truck to retrieve Sluka. Nelson spotted Sluka chasing Stanton. After Nelson saw Stanton and Sluka drive through a red light, he sped to catch up to them. Nelson estimated that Stanton and Sluka were driving around 55-60 miles per hour (mph) in a 30-35 mph zone. Nelson decided to intervene by speeding up to 80 mph and passing Sluka so that he could get between Sluka's and Stanton's vehicles. Stanton and Nelson drove through a red light. Nelson then saw that Sluka had stopped at the light, and Nelson turned off the road so that he was no longer following Stanton.

Stanton slowed down to make a turn. He still believed he was being followed. While Stanton made the turn, he lost control of the truck while going

---

<sup>2</sup> The owner of the truck had left it in the care of defendant Todd Evans. The complaint alleges, "All of Defendant Brayden Stanton's negligent acts or admissions herein were done for and on behalf of Defendants, Todd Evans, 'Jane Doe' Evans . . . who are therefore responsible for the conduct of Defendant, Brayden Stanton, under the Doctrines of Negligent Entrustment, The Family Car Doctrine, Agency principles, or other such applicable law to be determined upon further discovery herein."

No. 81041-3-1/4

about 45 mph. The truck veered across the opposite lane of travel and then off the roadway. The vehicle damaged a number of trees before landing on its side. Stanton lost consciousness and suffered a concussion.

This second accident exacerbated Hart's injuries and "produced increased headaches."

In November 2012, almost two years later, Hart filed this lawsuit.

#### C. The Third Accident

The third accident occurred on April 7, 2013, roughly five months after Hart filed the complaint. Coincidentally, the incident took place at the same intersection where the first accident involving Prather occurred. The other driver involved in the collision was David Barker. The accident did not cause any new injuries to Hart but exacerbated her previous injuries.

#### D. The Fourth Accident

The fourth and final accident occurred about a year later on March 22, 2014. Hart was in the passenger seat of the vehicle of her friend, Brittany Powell. Powell believes that while she was driving on an I-5 south onramp in Seattle, one or more of the tires on her vehicle "blew." Powell began to lose control of the car and it slid across the other lanes and onto the opposite side of the highway; the car faced oncoming traffic. Another vehicle then "side swiped" the front of the car with "a little bit more" damage on the passenger side. Hart testified that the collision did not cause her to suffer any new injuries, but caused her previous injuries to "flare[] up" for two or three days.

E. Further Litigation, Trial & Verdict

Hart amended her complaint to add Barker and Powell as defendants. The court granted Powell's motion to dismiss prior to sending the case to the jury.

The court determined that Hart was fault-free with regard to the second, third, and fourth accidents, and instructed the jury as such.

After seven weeks of trial, the jury awarded Hart:

- \$17,000 in past economic and non-economic damages for the period of March 1, 2009 to December 22, 2009;
- \$59,000 in past economic and non-economic damages for the period of December 22, 2009 to April 7, 2013;
- \$32,000 in past economic and non-economic damages for the period of April 7, 2013 to March 22, 2014; and
- \$325,000 in past economic and non-economic *and* future economic and non-economic damages for the period of March 22, 2014 to the present.

The jury found that defendants Prather, Nelson, Stanton, and Barker acted negligently. But it determined that Nelson's negligence was not a proximate cause of Hart's injuries. The jury also determined that Hart's injuries were divisible. It apportioned responsibility for Hart's injuries as follows:

To the collision of March 1, 2009:	<u>4</u> %
To Defendant Stanton:	<u>70</u> %
To Defendant Nelson:	<u>0</u> %
To Defendant Barker:	<u>6</u> %
To the collision of March 22, 2014:	<u>20</u> %.

The court reduced the judgment by 20 percent to account for the damages attributed to the March 22, 2014 accident, as to which it had dismissed the involved defendant, Powell. The court then entered judgments holding the defendants severally liable only. Hart appeals.

II. ANALYSIS

A. Joint and Several Liability

Hart argues that the trial court erred by not rendering the defendants jointly and severally liable for her damages under RCW 4.22.070(1)(b). While defendants Stanton and Evans<sup>3</sup> agree with Hart, defendants Barker, Prather, and Knauer assert that joint and several liability under the statute does not apply because Hart's injuries were divisible. We determine the court did not err.

We review de novo issues of statutory interpretation. Afoa v. Port of Seattle, 191 Wn.2d 110, 119, 421 P.3d 903 (2018). We "look first to the plain meaning of the statutory language, and . . . interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous." Benson v. State, 4 Wn. App. 2d 21, 26, 419 P.3d 484 (2018). Our fundamental objective when construing a statute is to determine and carry out the legislature's intent. King County v. King County Water Dist. No. 20, 194 Wn.2d 830, 853, 453 P.3d 681 (2019).

Statutes that can be reasonably interpreted in two or more ways are ambiguous. Payseno v. Kitsap County, 186 Wn. App. 465, 469, 346 P.3d 784

---

<sup>3</sup> As mentioned above, the jury apportioned 70 percent of responsibility for Hart's damages to Stanton, who drove Evans's truck in the second accident.



(2015). When statutes are ambiguous, it is appropriate for courts “to resort to aids to construction, including legislative history.” King County, 194 Wn.2d at 853. Ultimately, we must harmonize related statutory provisions to carry out a consistent scheme that maintains the statute’s integrity. King County, 194 Wn.2d at 853.

Through the 1986 tort reform act, the legislature abrogated the common law rule of joint and several liability, leaving several liability as the default. Afoa, 191 Wn.2d at 119. Still, a statutory exception applies when the plaintiff was not at fault:<sup>4</sup>

(1) . . . The liability of each defendant shall be several only and not be joint except:

. . .

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant’s] total damages.

RCW 4.22.070(1)(b) (alteration in original).

In Kottler v. State, 136 Wn.2d 437, 963 P.2d 834 (1998), our Supreme Court analyzed when joint and several liability applies under RCW 4.22.070. Kottler identifies three scenarios where joint liability applies: (1) where negligent parties acted in concert or a master/servant or principal/agent relationship existed, (2) cases involving hazardous waste, tortious interference with business, and unmarked fungible goods, and (3) where plaintiff is fault-free and the court entered judgment against two or more defendants. Id. at 446-47. The court

---

<sup>4</sup> The parties do not dispute that, at the trial court, Hart was determined to be fault free with respect to the accidents.

stated that when a plaintiff is fault-free, only a modified form of joint and several liability applies. Id. at 447. Under this modified approach, defendants “will be jointly and severally liable only for the sum of their proportionate liability.” Id. at 446; see also RCW 4.22.070(1)(b) (“defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant’s] total damages”) (alteration in original).

RCW 4.22.070(1)(b), as interpreted by Kottler, provides that joint and several liability applies when the plaintiff was not at fault and the defendants are jointly liable for “the sum of their proportionate liability.” 136 Wn.2d at 446. This must mean that joint liability applies only to injuries caused by an accident where more than one defendant is liable. Thus, for example, defendants Parker and Knauer—who were involved in only the first accident—cannot be held jointly liable under the statute for injuries caused by the second and third accidents.<sup>5</sup> This is the only reasonable interpretation of the statute as to this issue, so it is not ambiguous.<sup>6</sup>

Here, where there were multiple unrelated accidents and the jury determined Hart’s damages were divisible as between the accidents, the

---

<sup>5</sup> To this point, we note that we avoid readings of statutes that produce absurd results. Benson, 4 Wn. App. 2d at 26.

<sup>6</sup> Even if RCW 4.22.070 were ambiguous, legislative history would compel us to reach the same result. Through the 1986 tort reform act (Act), the legislature sought to limit the applicability of joint liability. See Duke v. Boyd, 133 Wn.2d 80, 93, 942 P.2d 351 (1997) (stating that the purpose of the Act “was to limit causes of action for injured plaintiffs”). Before the Act, the Washington Supreme Court had declined to impose joint liability when a plaintiff’s injuries resulted from multiple, unrelated accidents. See Smith v. Rodene, 69 Wn.2d 482, 484, 418 P.2d 741 (1966) (determining no joint liability where two independent torts, separated by distance and time, caused separate harms). Thus, to expand joint liability to hold defendants liable for divisible injuries would contradict the legislature’s purpose in passing the Act.

legislature's policy choice to make several liability the default rule applies. See Cox v. Spangler, 141 Wn.2d 431, 446, 5 P.3d 1265 (2000) (noting that joint liability applies when there is either concert of action or independent torts uniting to cause a single injury). The trial court did not err.<sup>7</sup>

B. Verdict Form

Hart claims the trial court erred by adding the March 22, 2014 accident to the verdict form because it permitted the jury to allocate fault to Powell, a dismissed, non-negligent defendant. Defendants Prather and Knauer<sup>8</sup> respond that the verdict form allowed Hart to argue her theory of the case and did not misstate the law. Defendant Barker contends that the verdict form did not permit the jury to assign fault to Powell. We determine the court properly added the March 22, 2014 collision to the special verdict form for the jury to apportion responsibility for damages.

The trial court initially omitted the March 22, 2014 accident when asking the jurors to allocate a percentage of responsibility for Hart's injuries. But after a question from the jury about the number of collisions and Powell, the court decided "to do what [it] wanted to do to begin with, and that is put the collision of March 22nd, 2014, back in to the allocation of divisible responsibility." When Hart again stated that she did not believe the court could include a party that was found to have not been negligent, the court responded that it was not allocating

---

<sup>7</sup> On appeal, Hart does not raise any issue concerning whether a defendant should be jointly liable for an injury in connection with only the accident in which they were involved (versus accidents in which they were uninvolved).

<sup>8</sup> Defendants Nelson, Stanton, and Evans did not address this issue in their briefing.

No. 81041-3-1/10

fault to Powell but "asking [the jury] to divide the damages in accordance with the four accidents, regardless of who is at fault."<sup>9</sup>

The special verdict form's Question 5 stated that Powell was not negligent on March 22, 2014. And Jury Instruction 25 told the jury to consider the March 22, 2014 accident for assessing only Hart's injuries or damages:

Brittany Powell has been dismissed from this lawsuit. It has been determined by the Court that, as a matter of law, there was insufficient evidence to support a claim that Brittney [sic] Powell was negligent and that such negligence was a proximate cause of the accident of March 22, 2014.

You are to consider the accident of March 22, 2014 solely for the purposes of deciding, what if any, effect that accident had on plaintiff's claimed injuries or damages.

The jury ultimately allocated 20 percent of Hart's damages to the March 22, 2014 collision.

We "review a trial court's decision regarding a special verdict form under

---

<sup>9</sup> Defendant Barker asserts that the invited error doctrine bars Hart's challenge to the special verdict form. The invited error doctrine "prohibit[s] a party from setting up an error at trial and then complaining of it on appeal." Angelo Prop. Co., LP v. Hafiz, 167 Wn. App. 789, 823, 274 P.3d 1075, 1092 (2012) (alteration in original) (quoting City of Seattle v. Patu, 147 Wn.2d 717, 720, 58 P.3d 273 (2002)). But at the trial court, Hart objected to the verdict form and explained her reasoning:

I also except on the verdict form by inclusion of Ms. Powell as a percentage. And I know you put in, "The collision on March 22nd, 2014," but the jury knows that that's Ms. Powell who has been dismissed from the lawsuit.

And as a general proposition, I don't believe you can under the statute RCW 4.22.070 allocate to a party who has not been found at the threshold level of fault which is negligence. And she in the end was found nonnegligent in this case, or at least that there is an absence of proof in that regard.

The invited error doctrine does not apply.

Similarly, defendants Prather and Knauer argue Hart waived her prior objection to including the March 22, 2014 accident in the allocation of damages because she stated that "the Court has now helped in providing needed clarity." But given that Hart had just made a detailed objection to the inclusion of the accident, we determine this statement did not constitute a waiver.

the same standard we apply to decisions regarding jury instructions.” Canfield v. Clark, 196 Wn. App. 191, 199, 385 P.3d 156 (2016). “Jury instructions are not erroneous if they permit each party to argue their theory of the case, are not misleading, and when read as a whole, properly inform the trier of fact of the applicable law.” Id. We review de novo errors of law in jury instructions. State v. Wang, 5 Wn. App. 2d 12, 23, 424 P.3d 1251 (2018).

RCW 4.22.015 requires negligent or reckless conduct that breached a recognized duty for one to be “at fault.” Smelser v. Paul, 188 Wn.2d 648, 657, 398 P.3d 1086 (2017) (citing RCW 4.22.015). Thus, “[w]here no tort exists, no legal duty can be breached and no fault attributed or apportioned under RCW 4.22.070(1).” Id. at 656; see also Wash. Dep’t of Transp. v. Mullen Trucking 2005, LTD, 194 Wn.2d 526, 535, 451 P.3d 312 (2019) (“the legal proposition of Smelser [is] that there must be an actionable duty in tort before fault allocation is allowed”).

Hart asserts that the court erred by permitting the jury to allocate fault to Powell. But this mischaracterizes the special verdict form. Question 12 on the verdict form provides, “Assume 100% represents the total of the combined fault *or collisions* that proximately caused plaintiff’s injuries and/or damages. What percentage of the 100% is attributable to the negligence or collisions of each of the following[.]” (Emphasis added.) The special verdict form then lists the March 1, 2009 collision, defendant Stanton, defendant Nelson, defendant Barker, and the collision of March 22, 2014. Because the question allowed the jury to assign a percentage of responsibility for Hart’s injuries to defendants *or*

collisions, it was apparent from the question that the jury was not assigning fault to Powell. It also was clear to the jury that they were not assigning fault to Powell given that Question 5 stated that Powell was not negligent on March 22, 2014. Finally, Instruction 25 told the jury that Powell was not negligent but that they could consider the accident for the effect it had on Hart's injuries.

As the trial court stated, the question asked the jury "to divide the damages in accordance with the four accidents, regardless of who is at fault." Because the jury considered the March 22, 2014 accident for only its effect on Hart's injuries, we conclude its inclusion on the special verdict for did not violate RCW 4.22.070.

#### C. Sufficiency of the Evidence

Hart asserts that sufficient evidence did not support the jury's finding that the March 22, 2014 accident contributed to 20 percent of her injuries. Defendants Barker, Stanton, and Knauer claim that viewing the evidence in the light most favorable to them, sufficient evidence supported the jury's verdict. We agree with these defendants.

We "cannot overturn the jury's verdict unless it is clearly unsupported by substantial evidence." Gorman v. Pierce County, 176 Wn. App. 63, 87, 307 P.3d 795 (2013). Substantial evidence is what "would persuade a fair-minded person of the truth or correctness of the matter." Erection Co. v. Dep't of Labor & Indus., 160 Wn. App. 194, 202, 248 P.3d 1085 (2011). "When reviewing a jury verdict for substantial evidence, [courts] must consider all evidence and draw all reasonable inferences in the light most favorable to the verdict." Gorman, 176

Wn. App. at 87. The court may not substitute its judgment for the jury's. Id. There is a strong presumption that the verdict is correct. Bunch v. King County Dep't of Youth Servs., 155 Wn.2d 165, 179, 116 P.3d 381 (2005).

Dr. Natalia Murinova began treating Hart after the second collision. After the third accident, Dr. Murinova diagnosed Hart as having post traumatic cervicogenic headaches and migraines. On cross-examination by Powell, Dr. Murinova testified that the fourth accident caused Hart to suffer worsening headaches because her headaches increased from occurring two to three times a day to occurring all day long. The testimony showed that in the fourth accident Hart was in a collision on the freeway where the vehicle spun out of control. Another car then hit the vehicle she was in, on her side of the vehicle.

Viewing this testimony about the accident and Hart's condition in the light most favorable to the verdict, and given the strong presumption that the verdict is correct, we determine that Hart fails to show that substantial evidence clearly did not support the verdict. Thus, we reject this claim.

#### D. Juror Misconduct

Hart contends the trial court erred by denying her motion for a new trial based on juror misconduct. Defendants Barker, Nelson, Hart, and Prather<sup>10</sup> disagree. We decide the trial court did not abuse its discretion by denying Hart's motion.

We review the denial of a motion for a new trial for abuse of discretion. State v. Balisok, 123 Wn.2d 114, 117, 866 P.2d 631 (1994). A court abuses its

---

<sup>10</sup> Defendants Stanton and Evans do not address this issue in their briefing.

No. 81041-3-I/14

discretion if its decision is manifestly unreasonable or exercised on untenable grounds. Breckenridge v. Valley Gen. Hosp., 150 Wn.2d 197, 203-04, 75 P.3d 944 (2003).

Because the secrecy of jury deliberations is central to our jury system, courts may not receive information to impeach a verdict based on the details of the jury's deliberations. Long v. Brusco Tug & Barge, Inc., 185 Wn.2d 127, 131, 368 P.3d 478 (2016). When determining whether juror misconduct warrants a mistrial, "the first question is whether the facts alleged 'inhere[] in the verdict'; this is a question of law [courts] review de novo." Id. (alteration in original) (quoting Ayers v. Johnson & Johnson Baby Prods. Co., 117 Wn.2d 747, 768, 818 P.2d 1337 (1991)). Facts linked to a juror's mental processes, such as their motive, intent, or belief, or describing the effect on the jury inhere in the verdict. Long, 185 Wn.2d at 131-32.

But a jury's consideration of extrinsic evidence constitutes misconduct and may justify a new trial. Balisok, 123 Wn.2d at 118. Extrinsic evidence is information that is outside the evidence admitted at trial. Id. If the trial court determines that juror declarations allege facts constituting misconduct, then it next exercises its discretion to decide what effect the misconduct could have had on the jury. Long, 185 Wn.2d at 132. "If the trial court has any doubt about whether the misconduct affected the verdict, it is obliged to grant a new trial." Adkins v. Alum. Co. of Am., 110 Wn.2d 128, 137, 750 P.2d 1257 (1988).

Hart provided two juror declarations alleging the following misconduct by one or more jurors: (1) looking at her Facebook page, (2) providing information



related to the location of the December 22, 2009 accident, (3) referring to her as an "ambulance chaser" and being biased against women, and (4) preferring Prather because they thought she was "pretty." We address each in turn.

1. Facebook page

In her declaration, the presiding juror stated that four to five jurors violated the court's orders and had "got on the Internet and were reviewing Rebecca [sic] Hart's Facebook page." In his declaration, another juror stated that he "recall[ed] during deliberations that some of the jurors had looked up Rebekah Hart's Facebook page on the internet." These declarations fail to provide any detail as to what the jurors may have discovered on Hart's Facebook page. Thus, even assuming this constituted misconduct, without more detail about what jurors said about the Facebook page, the court could not determine how the misconduct affected the jury. See State v. Arndt, 5 Wn. App. 2d 341, 350, 426 P.3d 804 (2018) (ruling that a juror looking at websites did not warrant a mistrial where the content viewed by the juror was unclear). We conclude the court did not abuse its discretion by denying a new trial based on this alleged ground of juror misconduct.

2. Information about the location of the December 22, 2009 accident

Hart next asserts that a juror who lived along the route of the December 22, 2009 accident provided "information concerning his residence that was on or near the pursuit route, and his opinion in that regard concerning time and distances that would have elapsed based upon his knowledge of residing in that area." But "[d]uring jury deliberations, jurors may 'rely on their personal life

experience to evaluate the evidence presented at trial.” Long, 185 Wn.2d at 135 (quoting Breckenridge, 150 Wn.2d at 199 n.3). During jury selection, several of the prospective jurors disclosed that they lived on Gig Harbor. See Long, 185 Wn.2d at 135 (noting that a juror disclosed relevant life experiences during voir dire when rejecting a juror misconduct claim). The juror’s “opinion . . . concerning time and distances that would have elapsed based upon his knowledge of residing in the area” amounts to a reliance on his personal life experience. Moreover, because nothing in the declarations suggests the juror had any special knowledge, his statements had little prejudicial effect. See Chiappetta v. Bahr, 111 Wn. App. 536, 542-43, 46 P.3d 797 (2002) (concluding that where a juror did not have special knowledge, their statement constituted speculation that carried little prejudicial effect). We determine the trial court did not abuse its discretion by denying a new trial based on this alleged conduct.

3. Improper bias

Hart asserts that some jurors were biased against her, because they referred to her as an “ambulance chaser,” and against women in general.

“The right to trial by jury includes the right to an unbiased and unprejudiced jury, and a trial by a jury, one or more of whose members is biased or prejudiced, is not a constitution[al] trial.” Turner v. Stime, 153 Wn. App. 581, 587, 222 P.3d 1243 (2009) (alteration in original) (quoting Alexson v. Pierce County, 186 Wash. 188, 193, 57 P.2d 318 (1936)). RCW 4.44.170(2) defines actual bias as “the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the

challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging.”

a. “Ambulance chaser”

Hart contends that remarks that she was an “ambulance chaser” show that some jurors were biased against her.

Though the “ambulance chaser” comments show some ill feelings towards Hart, the trial court was within its discretion to determine that they did not show that the jurors could not try the case impartially. Furthermore, calling a plaintiff an “ambulance chaser” does not show such extreme bias such that the right to a jury trial was clearly abridged. See State v. Berhe, 193 Wn.2d 647, 658, 444 P.3d 1172 (2019) (quoting Warger v. Shauers, 574 U.S. 40, 135 S. Ct. 521, 529 n.3, 190 L. Ed. 2d 422 (2014) (“However, the no-impeachment rule must yield in ‘cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged.’”)).

b. Alleged bias against women

The presiding juror’s declaration also states that “[i]t was very clear that a number of the male jurors did not like my opinion simply because I was a woman.” But this statement does not amount to more than Coalman’s impression of some of the other jurors. Statements about the declarant’s perception of another juror’s remarks “unquestionably inhere in the verdict.” Long, 185 Wn.2d at 134 n.4. Additionally, Hart does not explain how this alleged bias potentially impacted the verdict. Thus, we do not consider this argument further. See id. at 133 (refusing to consider statements once the court

determined they inhaled on the verdict).

4. Statements that Prather was "Pretty"

Hart's final argument on juror misconduct is that several jurors found Prather "pretty." To state that a party is pretty, without more, does not constitute misconduct. To the extent the presiding juror's declaration details the effect that Prather being attractive had on the jurors' decisions, it inheres the verdict and we do not consider it. Another juror's declaration provides merely that some jurors "favored" Prather. We determine the trial court did not abuse its discretion by denying a new trial on this alleged conduct.

E. Jury Instructions 23 and 24

Hart claims the trial court erred by giving two instructions on intervening and superseding causes because they were unacceptably redundant and not supported by substantial evidence. We disagree.

Instruction 23 explained the concept of superseding cause in the context of the entire case:

A superseding cause is a new independent cause that breaks the chain of proximate causation between a defendant's negligence and an injury.

If you find that a defendant was negligent but that the sole proximate cause of the injury was a later independent intervening cause, including but not limited to the accidents of December 22, 2009, April 7, 2013, or March 22, 2014, that a defendant, in the exercise of ordinary care, could not reasonably have anticipated, then any negligence of a defendant is superseded and such negligence was not a proximate cause of the injury. If, however, you find that a defendant was negligent and that in the exercise of ordinary care, a defendant should reasonably have anticipated the later independent intervening cause, then that act does not supersede a defendant's original negligence, and you may find that a defendant's negligence was a proximate cause of the injury.

It is not necessary that the sequence of events or the particular resultant injury be foreseeable. It is only necessary that the resultant injury fall [sic] within the general field of danger which a defendant should reasonably have anticipated.

Instruction 24 addressed superseding cause with relation to the second accident:

A superseding cause is a new independent cause that breaks the chain of proximate causation between a defendant's negligence and an injury.

If you find that defendant Eric Nelson was negligent but that the sole proximate cause of the injury was a later independent intervening cause that defendant Eric Nelson, in the exercise of ordinary care, could not reasonably have anticipated, then any negligence of defendant Eric Nelson is superseded and such negligence was not a proximate cause of the injury. If, however, you find that defendant Eric Nelson was negligent and that in the exercise of ordinary care, defendant Eric Nelson should reasonably have anticipated the later independent intervening cause, Brayden Stanton's driving, then that act does not supersede defendant Eric Nelson's original negligence, and you may find that defendant Eric Nelson's negligence was a proximate cause of the injury.

It is not necessary that the sequence of events or the particular resultant injury be foreseeable. It is only necessary that the resultant injury fall [sic] within the general field of danger which defendant Eric Nelson should reasonably have anticipated.

In reviewing jury instructions, we consider whether the trial court abused its discretion by giving, or refusing to give, certain instructions. Cramer v. Dep't of Highways, 73 Wn. App. 516, 520, 870 P.2d 999 (1994). A court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds. Breckenridge, 150 Wn.2d at 204. "Instructions are not erroneous if they '(1) permit each party to argue [the] theory of the case, (2) are not misleading, and (3) when read as a whole, properly inform the trier of fact of the applicable law.'" Cramer, 73 Wn. App. at 520 (alteration in original) (quoting Walker v. State, 67 Wn. App. 611, 615, 837 P.2d 1023 (1992)).

1. Redundancy

A court errs in giving instructions that "as a whole so repetitiously cover a point of law or application of a rule as to grossly overweigh their total effect on one side and thereby generate an extreme emphasis in favor of one party to the explicit detriment of the other party." Samuelson v. Freeman, 75 Wn.2d 894, 897, 454 P.2d 406 (1969) (determining giving six instructions on the standard of care was error). Minor redundancies or casual repetitions in instructions do not constitute error. Id.

Instructions 23 and 24 did not generate an extreme emphasis that grossly favored any defendant over Hart. Though the instructions both concerned superseding cause and used similar language, they concerned different contexts. Instruction 23 concerned superseding causes in terms of Hart's overall damages, while Instruction 24 concerned the issue in relation to Nelson's negligence. The instructions explained what would amount to a superseding cause and what would not. Given this balance, the instructions did not so explicitly favor one side as to constitute an abuse of discretion.

2. Sufficient Evidence for Instruction 24

Nelson asserts that Hart waived any appellate challenge to Instruction 24 because she did not object on the ground that it was not supported by substantial evidence until after the verdict. Hart does not address this argument in her Reply Brief.

"A party who objects to a jury instruction must 'state distinctly the matter to which counsel objects and the grounds of counsel's objection, specifying the

number, paragraph or particular part of the instruction to be given or refused.”  
Millies v. LandAmerica Transnation, 185 Wn.2d 302, 310, 372 P.3d 111 (2016)  
(quoting CR 51(f)). If a party fails to do so, they deprive the court of the  
opportunity to remedy the instructional error. Id. A party’s failure to adequately  
object to an instruction may preclude appellate review. Id.

Here, while Hart objected to Instructions 23 and 24 because they were impermissibly redundant, she did not object to Instruction 24 because it was not supported by substantial evidence until after the verdict. Indeed, when arguing that the instructions were redundant, Hart stated that “[i]t’s [her] position that only the superseding cause really relates to the December 22nd accident.” Hart’s failure to object to the instruction on substantial evidence grounds deprived the court of the opportunity to remedy any instructional error. Because Hart not only did not object to Instruction 24 because it was not supported by substantial evidence, but explicitly stated that she believed the issue of superseding cause applied to the second accident and Nelson, she did not adequately object to the instruction on substantial evidence grounds below. Hart makes no argument to suggest she properly preserved the issue for appeal. We decline to review this issue. See RAP 2.5(a) (noting that appellate courts may refuse to review an error not raised in the trial court).

F. Post-Trial Motion for Judgment as a Matter of Law regarding Nelson

Hart claims the trial court abused its discretion by denying her post-trial motion for judgment as a matter of law as to Nelson’s liability. Nelson asserts that substantial evidence supported the verdict. We agree with Nelson.

“We review a trial court’s decision on a motion for a judgment as a matter of law using the same standard as the trial court.” Mega v. Whitworth College, 138 Wn. App. 661, 668, 158 P.3d 1211 (2007). Courts will grant a motion for a judgment as a matter of law when, viewing the evidence in the light most favorable to the nonmoving party, it can say as a matter of law that neither substantial evidence nor reasonable inference sustains a verdict for the nonmoving party. Id. “If any justifiable evidence exists on which reasonable minds might reach conclusions consistent with the verdict, the issue is for the jury.” Id.

When a party asserts that a jury did not base its verdict on the evidence, courts determine whether substantial evidence existed to support the verdict and view all the evidence in the light most favorable to the non-moving party. Sommer v. Dep’t of Soc. & Health Servs., 104 Wn. App. 160, 172, 15 P.3d 664 (2001). Substantial evidence is what “would persuade a fair-minded person of the truth or correctness of the matter.” Erection Co., 160 Wn. App. at 202. There is a strong presumption that the verdict is correct. Bunch, 155 Wn.2d at 179.

Hart focuses most of her argument on whether the facts show that Nelson acted negligently. But the jury found Nelson acted negligently. Yet it apparently did not apportion any percentage of fault to Nelson because it determined that his negligence did not proximately cause Hart’s injuries. Hart’s briefing does not make any argument on why substantial evidence does not support the jury’s finding on proximate cause, but states that Nelson’s negligence “as a matter of undisputed fact caused and contributed to the single-car collision.” Because Hart



does not provide argument on this issue, we may decline to review it. See Joy v. Dep't of Labor & Indus., 170 Wn. App. 614, 629-30, 285 P.3d 187 (2012) (citing RAP 10.3(a)(6)) (noting that an appellant's lack of reasoned argument on an issue does not merit judicial consideration).

But in considering the issue, we determine that substantial evidence supported the jury's determination. Viewing the evidence in the light most favorable to Nelson, he left his house to retrieve Sluka, his stepson. After he saw Sluka chasing Stanton, he tried to get Sluka to stop by signaling to him. Nelson then sped to 80 mph to intervene in the car chase and get Sluka to drive home. Once Sluka stopped following Stanton, Nelson also stopped following Stanton and turned off the road. The accident occurred after Nelson stopped following Stanton, when Stanton made a turn while driving over the speed limit.

Based on these facts, the jury could determine that Nelson's negligence did not cause the accident. Thus, substantial evidence supports the jury's finding. We determine the trial court did not err by denying Hart's motion for a judgment notwithstanding the verdict.

#### G. Loss of Earning Capacity Instruction

The trial court denied Hart's request to include "loss of earning capacity" as an element in the damages instruction. She claims this was error. Defendants Barker, Prather, and Knauer<sup>11</sup> claim Hart failed to present evidence

---

<sup>11</sup> Defendants Nelson, Stanton, and Evans did not address this issue in their briefing.

to support such an instruction. We agree with these defendants.

We review a trial court's decision to deny a jury instruction for an abuse of discretion. Hopkins v. Seattle Pub. Sch. Dist. No. 1, 195 Wn. App. 96, 104, 380 P.3d 584 (2016). A court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds. Breckenridge, 150 Wn.2d at 204.

"The propriety of a jury instruction is governed by the facts of the particular case." Fergen v. Sestero, 182 Wn.2d 794, 803, 346 P.3d 708 (2015). A party is entitled to instructions on their theory if it is supported by substantial evidence. State v. Rowley, 74 Wn.2d 328, 333-34, 444 P.2d 695 (1968). Substantial evidence is what "would persuade a fair-minded person of the truth or correctness of the matter." Erection Co., 160 Wn. App. at 202.

The "[i]mpairment of earning capacity . . . is the permanent diminution of the ability to earn money." Murray v. Mossman, 52 Wn.2d 885, 889, 329 P.2d 1089 (1958). Courts have determined that substantial evidence for a lost earning capacity instruction existed where the evidence showed "the plaintiff sustained severe and permanent injuries" and "although . . . able to return to work, [the plaintiff] was unable to work as well as before." Levea v. G.A. Gray Corp., 17 Wn. App. 214, 225, 562 P.2d 1276 (1977) (citing Murray, 52 Wn.2d at 889).

Hart asserts that evidence that she no longer worked in the cooking industry as a chef<sup>12</sup> and that she often lays down during family events was alone sufficient to support a lost earning capacity instruction. But neither of these facts

---

<sup>12</sup> Hart testified that she completed culinary school and began a job as a chef.

shows the permanence or severity of Hart's injuries or relates to whether she could ever return to work or work as well as before. The trial court did not abuse its discretion in omitting lost earning capacity as an element of the damages instruction.

#### H. Contradictory and Irreconcilably Inconsistent Verdict

Hart claims that the trial court erred by denying her motion for a new trial because the jury's verdict is impossible to understand. Barker, the only defendant who responds to this claim, asserts that Hart's confusion is unfounded. We agree with Barker.

Again, we review a trial court's ruling on a motion for new trial for an abuse of discretion. Balisok, 123 Wn.2d at 117. A court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds. Breckenridge, 150 Wn.2d at 204.

When considering a claim of inconsistencies in a verdict, courts consider the jury's answers and do not substitute their judgment for the jury's. Mears v. Bethel Sch. Dist. No. 403, 182 Wn. App. 919, 927, 332 P.3d 1077 (2014). But if the verdict form's answers show a clear contradiction such that the court cannot determine how the jury resolved an ultimate issue, the court will remand for a new trial. Id.

Hart argues the verdict is impossible to understand because she cannot tell under Question 10 whether the future damages relate solely to one or more

of the accidents at issue.<sup>13</sup> But Hart does not explain how the failure to divide the future damages based on accident renders the verdict impossible to understand. The form laid out amounts for past economic and non-economic damages and future economic and non-economic damages. Nor does Hart explain how the jury's answers to Question 10 contradict any other part of the verdict form.

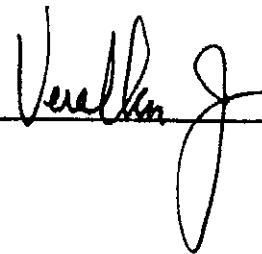
Hart also argues that the verdict is inconsistent because the jury determined that her injuries were divisible even though it was not provided with a definition of "indivisible injuries," and because the court allocated responsibility to the defendants for the judgment as if the injuries were indivisible. These issues, however, do not relate to any inconsistencies with the verdict form. Thus, we reject this claim.

We affirm.

  
\_\_\_\_\_

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

---

<sup>13</sup> Question 10 asked, "What do you find to be the total amount of plaintiff's damages resulting from some or all of the collisions, if any, from March 22, 2014 to the present (lines A and B below), and into the future (lines C and D below)?"

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

REBEKAH L. HART, individually,

Appellant,

v.

EMILY PRATHER and "JOHN DOE"  
PRATHER, individually and the marital  
community comprised thereof; PARKER  
J. KNAUER, individually; STEVEN  
KNAUER and PAMILA KNAUER,  
individually and the marital community  
comprised thereof; BRAYDEN STANTON  
and "JANE DOE" STANTON, individually  
and the marital community comprised  
thereof; TODD EVANS and "JANE DOE"  
EVANS, individually and the marital  
community comprised thereof; and ERIC  
NELSON and "JANE DOE" NELSON,  
individually and the marital community  
comprised thereof; DAVID W. BARKER  
and "JANE DOE" BARKER, individually  
and the marital community comprised  
thereof,

Respondents,

BRITTANY POWELL, individually,

Defendant.

No. 81041-3-I

ORDER DENYING MOTION  
FOR RECONSIDERATION

Appellant Rebekah Hart filed a motion to reconsider the opinion filed on  
August 24, 2020. Following consideration of the motion, the panel has determined  
that the motion should be denied.

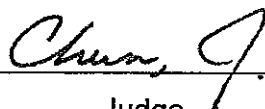
A 27

No. 81041-3-1/2

Now, therefore, it is hereby

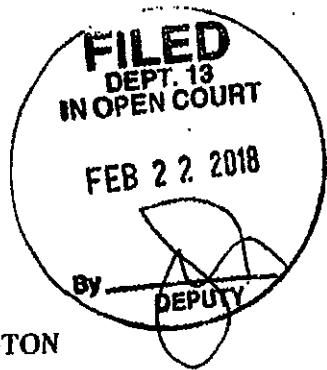
ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

  
\_\_\_\_\_  
Judge

A 28

8980



4847

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

3/1/2018

<p>REBEKAH L. HART, individually,</p> <p>Plaintiff,</p> <p>v.</p> <p>EMILY PRATHER and "JOHN DOE" PRATHER, individually and the marital community comprised thereof; PARKER J. KNAUER, individually; STEVEN KNAUER AND PAMILA KNAUER, individually and the marital community comprised thereof; BRAYDEN STANTON and "JANE DOE" STANTON, individually and the marital community comprised thereof; TODD EVANS and "JANE DOE" EVANS, individually and the marital community comprised thereof; and ERIC NELSON, individually; DAVID BARKER and "JANE DOE" BARKER, individually and the marital community comprised thereof; and BRITTANY POWELL, individually,</p> <p>Defendants.</p>	<p>NO. 12-2-14762-6</p> <p>SPECIAL VERDICT FORM (REVISED)</p>
---	---

ORIGINAL

A29

0299  
4844  
5/1/2018

We the jury, answer the questions submitted by the Court as follows:

**I. LIABILITY**

**QUESTION NO. 1:** Was defendant Emily Prather negligent on March 1, 2009?

**ANSWER:** YES (Write "Yes" or "No") *If no, do not answer Question 7.*

**QUESTION NO. 2:** Were either defendants Eric Nelson or Brayden Stanton negligent on December 22, 2009?

**ANSWER:**

- A) Eric Nelson YES (Write "Yes" or "No")
- B) Brayden Stanton YES (Write "Yes" or "No")

**QUESTION NO. 3:** Was the negligence of either or both Eric Nelson and/or Brayden Stanton a proximate cause of injury and/or damages to plaintiff?

**ANSWER:**

- A) Eric Nelson NO (Write "Yes" or "No")
- B) Brayden Stanton YES (Write "Yes" or "No")

**QUESTION NO. 4:** Was defendant David Barker on April 7, 2013 negligent?

**ANSWER:** YES (Write "Yes" or "No")

**QUESTION NO. 5:** Was defendant Brittany Powell on March 22, 2014 negligent?

**ANSWER:** NO (Write "Yes" or "No")

A 30



0330  
4844  
3/1/2018

**QUESTION NO. 6:** Was the accident of March 22, 2014 a cause of injury and/or damage to plaintiff?

**ANSWER:** YES (Write "Yes" or "No")

**II. DAMAGES**

**QUESTION NO. 7:** What do you find to be the amount of plaintiff's damages from March 1, 2009 to December 22, 2009? *These damages are solely attributable to defendants Prather/Knauer.*

**ANSWER:**

A) Past Economic Damages \$ 15,000  
B) Past Non-Economic Damages \$ 2,000

**QUESTION NO. 8:** What do you find to be the amount of plaintiff's damages from December 22, 2009 to April 7, 2013? *These damages are not the responsibility of defendant Barker.*

**ANSWER:**

A) Past Economic Damages \$ 28,000  
B) Past Non-Economic Damages \$ 31,000

**QUESTION NO. 9:** What do you find to be the amount of plaintiff's damages from April 7, 2013 to March 22, 2014? *These damages are not the result of the March 22, 2014 accident.*

**ANSWER:**

A) Past Economic Damages \$ 23,000  
B) Past Non-Economic Damages \$ 9,000

A 31

0391  
4844  
3/1/2018

**QUESTION NO. 10:** What do you find to be the total amount of plaintiff's damages resulting from some or all of the collisions, if any, from March 22, 2014 to the present (lines A and B below), and into the future (lines C and D below)?

**ANSWER:**

- A) Past Economic Damages \$ 24,000
- B) Past Non-Economic Damages \$ 26,000
- C) Future Economic Damages \$ 75,000
- D) Future Non-Economic Damages \$ 200,000

**QUESTION NO. 11:** Given the timeline of the collisions set forth above, were some of plaintiff's economic and non-economic injuries indivisible injuries?

**ANSWER:** NO (Write "Yes" or "No")

If your answer is "Yes" to Question No. 11, immediately above, sign the special verdict form. If your answer to Question No. 11, is "No" answer Question Number 12 below.

**QUESTION NO. 12:** Assume 100% represents the total of the combined fault or collisions that proximately caused the plaintiff's injuries and/or damages. What percentage of the 100% is attributable to the negligence or collisions of each of the following:

**ANSWER:**

- To the collision of March 1, 2009: 4 %
- To Defendant Stanton: 70 %
- To Defendant Nelson: 0 %
- To Defendant Barker: 6% %
- To the collision of March 22, 2014 20% %

*(INSTRUCTION: Sign this verdict form and notify the Judicial Assistant.)*

DATE: 2/22/18

SIGNED: *Kristen Coalman*  
Presiding Juror

A 32

## **RCW 4.22.015**

### **"Fault" defined.**

"Fault" includes acts or omissions, including misuse of a product, that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability or liability on a product liability claim. The term also includes breach of warranty, unreasonable assumption of risk, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

A comparison of fault for any purpose under RCW 4.22.005 through 4.22.060 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages.  
[ 1981 c 27 § 9.]

## **RCW 4.22.030**

### **Nature of liability.**

Except as otherwise provided in RCW 4.22.070, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several.  
[ 1986 c 305 § 402; 1981 c 27 § 11.]

### **NOTES:**

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.

## **RCW 4.22.070**

### **Percentage of fault—Determination—Exception—Limitations.**

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined

include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title [51](#) RCW. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant's] total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (1)(a) or (1)(b) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW [4.22.040](#), [4.22.050](#), and [4.22.060](#).

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking.

[ [1993 c 496 § 1](#); [1986 c 305 § 401](#).]

**NOTES:**

**Effective date—1993 c 496:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [ [1993 c 496 § 3](#).]

**Application—1993 c 496:** "This act applies to all causes of action that the parties have not settled or in which judgment has not been entered prior to July 1, 1993." [ [1993 c 496 § 4](#).]

**Preamble—Report to legislature—Applicability—  
Severability—1986 c 305: See notes following RCW 4.16.160.**

A 35

# THE LAW OFFICES OF BEN F. BARCUS

November 04, 2020 - 3:32 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 81041-3  
**Appellate Court Case Title:** Rebekah L. Hart, Appellant v. Emily Prather et al., Respondent  
**Superior Court Case Number:** 12-2-14762-6

### The following documents have been uploaded:

- 810413\_Petition\_for\_Review\_20201104153142D1546180\_5687.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was hart-petitionfor review.pdf*

### A copy of the uploaded files will be sent to:

- Gregory.Worden@lewisbrisbois.com
- ben@benbarcus.com
- jeffrey.coats@farmersinsurance.com
- joe@koptamacpherson.com
- karen@524law.com
- mclifton@rmlaw.com
- mdiefenbach@gth-law.com
- michelle.burnell@lewisbrisbois.com
- pamela.miller@farmersinsurance.com
- smith@sohalang.com
- sshaub@rmlaw.com
- thomas@sohalang.com
- tiffany@benbarcus.com
- tim@gosselinlawoffice.com
- ybenson@gth-law.com

### Comments:

---

Sender Name: Thea Wescott - Email: thea@benbarcus.com

**Filing on Behalf of:** Paul Alexander Lindenmuth - Email: paul@benbarcus.com (Alternate Email: paul@benbarcus.com)

Address:  
4303 RUSTON WAY  
TACOMA, WA, 98402  
Phone: (253) 752-4444

**Note: The Filing Id is 20201104153142D1546180**