

FILED  
Court of Appeals  
Division II  
State of Washington  
4/8/2019 3:55 PM

No. 52271-3-II

**COURT OF APPEALS,  
DIVISION II  
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.**

---

**APPELLANT’S OPENING BRIEF**

---

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. INTRODUCTION .....	6
II. ASSIGNMENTS OF ERROR.....	15
A. Assignments of Error .....	15
B. Issues Pertaining to Assignment of Error.....	18
III. STATEMENT OF THE CASE.....	20
IV. ARGUMENT.....	30
A. The Trial Court Erred by Failing to Enter Judgment on the Jury Verdict "Jointly and Severally." .....	30
B. The Trial Court Erred by <i>Sua Sponte</i> Revising the Verdict Form During Jury Deliberation Adding Dismissed Defendant Brittany Powell to the Verdict Form for Fault Allocation Purposes and Thereafter Deducting the Amount of "Fault" the Jury Attributed to this Non-Negligent Individual when Entering Final Judgement. ....	32
C. The 20 Percent Allocation of Fault by the Jury was Unsupported by Substantial Evidence and at a Minimum Warrants the Granting of a New Trial. ....	36
D. The Trial Court Erred by Failing to Grant Plaintiff a New Trial Based on Juror Misconduct.....	38
E. The Trial Court Erred When It Gave Two Redundant Intervening-superseding Cause Instructions in This Case Which Were Unsupported By The Evidence. (Court's Instruction No. 23 and 24).....	46
F. The Trial Court Should Have Granted Plaintiff's Post Trial Motion for Judgment As A Matter Of Law Regarding Defendant Nelson's Liability and/or At A Minimum A New Trial With Regard To Plaintiff's Claim Against Defendant Nelson. ....	55
G. The Trial Court Committed Reversible Error by Failing To Give Plaintiff A Loss Of Earning Capacity Instruction. ....	56
H. The Jury Verdict was Contradictory and Irreconcilably Inconsistent. It is Impossible to Determine What the Jury Meant by Its Verdict. ....	60
V. CONCLUSION.....	62
APPENDIX.....	65

**TABLE OF AUTHORITIES**

**Washington Cases**

*Adcox v. Children's Orthopedic Hosp.*, 123 Wn. 2d 15, 25, 864 P.2d 921 (1993)..... 30

*Afoa v. Port of Seattle*, 191 Wn. 2d 110, 119, 421 P.3d 903 (2018) ..... 29

*Bartlett v. Hantover* 9 Wn.App. 614, 513 P.2d 844 (1973)..... 57

*Berndt v. Hammer*, 58 Wn. 2d 408, 363 P. 2d 293 (1961) ..... 55

*Catlian v. DOL*, 101 Wn.2d 512, 515, 681 P.2d 233 (1984)..... 60

*Cox v. Spangler*, 141 Wn. 2d 431, 5 P. 3d 1265 (2000) ..... 53, 61

*Gardner v. Malone*, 60 Wn. 2d 836, 844-45, 376 P. 2d 651 (1962)..... 41

*Kotler v. State*, 136 Wn. 2d, 437, 443, 963 P.2d 834 (1998)..... 29

*Linguist v. Dengel*, 92 Wn. 2d 257, 595 P. 2d 934 (1979) ..... 53

*Mason v. Bitton*, 85 Wn. 2d 321, 354 P. 2d 1360 (1975) ..... 48

*McCluskey v. Handorff-Sherman*, 68 Wn. App. 96, 104, 841 P.2d 1300 (1992) affirmed, 125 Wn. 2d 882 P.2d 157 (1994)..... 30

*Murray v. Mossman*, 52 Wn.2d 885, 889, 329 P.2d 1089 (1958)..... 57

*Robinson v. Safeway Stores*, 113 Wn. 2d 154, 159, 776 P. 2d 676 (1989)..... 43, 44

*Samuelson v. Freeman*, 75 Wn. 2d 894, 897, 454 P. 2d 406 (1969) ..... 46

*Smelser v. Paul*, 188 Wn. 2d 648, 398 P.3d 1086 (2017)..... 30, 32, 33

*Standing Rock Homeowners v. Misich*, 106 Wn. 2d 231, 245, 23 P.3d 520 (2001)..... 31

*Travis v. Bohannon*, 128 Wn.App. 231, 115 P. 3d 342 (2005)..... 51, 53, 54

*Washburn v. Beatt Equipment Co.*, 121 Wn. 2d, 246, 291-95, 840 P.2d 860 (1992)..... 29

*Woodruff v. Ewald*, 127 Wn. 61, 219 P. 851 (1923)..... 41

## Washington Appellate Cases

<i>Albertson v. DSHS</i> , 191, Wn. App. 284, 297-99, 361 P.3d 808 (2015).....	33, 35, 37, 38
<i>Canfield v Clark</i> , 196 Wn. App. 191,199,385 P.3d 156 (2016) .....	17
<i>Colings v. City First Mortgage Servs., LLC</i> , 177 Wn. App. 908, 1031, 317 P.3d 1047 (2013)...	22
<i>Cramer v. Department of Highways</i> , 73 Wn.App. 516, 521, 870 P. 2d 999 (1994).....	38
<i>George Sollitt Corp. v. Howard Chapman Plumbing and Heating</i> , 67 Wn. App. 468, 474-75, 836 P.2d 851 (1992).....	16
<i>Hopkins v Seattle Pub. Sch.</i> , 195 Wn. App. 96, 108, 380 P.3d 584 (2016).....	33
<i>Joyce v. Department of Corrections</i> , 116 Wn. App. 569, 594, 75 P.3d 548, affirmed in part, reversed in part, 155 Wn. 2d 306, 119 P.3d 825 (2005).....	16, 19
<i>Kuhn v. Schnall</i> , 155 Wn. App. 560, 575, 228 P.3d 828 (2010).....	24
<i>Lennox v. Lourdes Health Network</i> , 216 Wn.App. Lexis 1613 (2016) (unpublished).....	39
<i>Loeffelholv v. C.L.E.A.N.</i> , 119 Wn. App. 665, 680-81, 82 P. 3d 1199 (2004) .....	26
<i>Mailloux v State Farm</i> , 76 Wn. App 507, 515, 887 P.2d 449 (1995).....	21
<i>Mears v. Bethel Sch. Dist.</i> , 182 Wn.App. 919, 927, 332 P.2d 1077 (2014) .....	44
<i>Mega v. Whitworth College</i> , 138 Wn. App. 661, 671, 158 P.3d 1211 (2007).....	21
<i>Phennah v. Whalen</i> , 28 Wn.App. 19, 621 P. 2 1304 (1980).....	39
<i>Richards v. Overlake Hospital Med. Ctr.</i> , 59 Wn. App. 226, 796 P.2d 737 (1990).....	24, 28
<i>Smith v. Kent</i> , 11 Wn. App. 439, 443, 523 P.2d 446 (1974) .....	24
<i>Sommers v. DSHS</i> , 104 Wn.App. 160, 172, 15 P.3d 664 (2001).....	40
<i>State v Wang</i> , 5 Wn. App. 2d. 12, 424 P.3d 125, (2018).....	18
<i>State v. Arndt</i> , 5 Wn. App. 2d 341, 426 P.3d 804 (2018) .....	24
<i>State v. Balisok</i> , 123 Wn. 2d 114, 118, 886 P.2d 631 (1994).....	24

<i>State v. Boling</i> , 131 Wn.App. 329, 333, 127 P.3d 740 (2006).....	24
<i>State v. Gaines</i> , 194 Wn. App. 892, 896, 380 P.3d 540 (2016).....	24, 28
<i>State v. McCreven</i> , 170 Wn. App. 444, 482, 284 P. 2d 793, (2012).....	31
<i>State v. Parker</i> , 60 Wn. App. 719, 726-27, 806 P. 2d 1241 (1991).....	34
<i>State v. Tigano</i> , 63 Wn. App. 336, 341, 818 P.2d 1369 (1991).....	25
<i>Sunnyside Valley Irrigation Dist. v. Dickie</i> , 149 Wn. 2d. 873, 879, 73 P.3d 369 (2013).....	22
<i>Turner v. Stime</i> , 153 Wn. App. 581, 588-590, 222 P. 3d 1243 (2009).....	29
<i>Young Tao v. Heng Bin Li.</i> , 141 Wn. App. 825, 830, 166 P.3d 1263 (2007) .....	17

**Out of State Cases**

<i>Boytin v. Bennett</i> , 118 S.E. 2d 12 (N.C. 1961) .....	34
<i>Carney v. DeWees</i> , 70 A. 2d 142 (Conn. 1949).....	34
<i>Suwanski v. Village of Lombard</i> , 794 N.E. 2d 1016 (Ill. App. 2003).....	35

**Federal Cases**

<i>Bell v. Uribe</i> , 729 F. 3d 1052 (9 <sup>th</sup> Cir. 2013).....	29
--	----

**Statutes & Rules**

CR 59(a)(2) .....	19
RCW 4.22.015 .....	10, 17, 18, 31, 33
RCW 4.22.070 .....	10, 18, 30, 31, 33, 34
RCW 4.22.070(1).....	31
RCW 4.22.070(1)(b).....	10, 18, 29, 30
WPI 1.01 .....	39, 40
WPI 15.04 .....	49
WPI 45.24 .....	60

**Other Authority**

Restatement (2d) of Torts § 442A (1965)..... 34

Restatement (2d) of Torts § 449 (1965)..... 36

Restatement (2d) of Torts § 876 (1979)..... 34

Restatement (2d) of Torts §442 (1965)..... 36

## I. INTRODUCTION

This lawsuit arises out of four separate automobile accidents involving the Appellant, (hereafter Plaintiff), Rebekah L. Hart. 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 plaintiff 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. RP 4018; CP 783-85, 989-991, 2393.

Thus, by way of admission, court ruling and/or jury verdict it was determined below that Plaintiff was, in all instances, entirely "fault free."

The first accident occurred on March 1, 2009. The accident occurred on Olympic View Drive in that portion of the roadway which acts as an overpass over Highway 16.<sup>1</sup> The jury found defendant Emily

---

<sup>1</sup> Olympic View Drive is a roadway within Gig Harbor, Washington.

Prather, who was driving an SUV owned by the parents of her "date" that night, Parker J. Knauer, who was a passenger in the vehicle, liable for this accident - resolving any liability dispute in plaintiff's favor. CP 2559-2562.

The second accident occurred on December 22, 2009. The day prior, December 21, 2009, plaintiff visited her chiropractor – Dr. John Mishko - still reporting and undergoing treatment for back pain which began immediately after the March 1, 2009 (first) accident. RP 1345.

The December 22, 2009 (second) accident occurred on Artondale Dr. NW in Gig Harbor, Washington which was a single-vehicle accident involving a pickup truck being driven by defendant Stanton at a high rate of speed, which lost control, went off the roadway, rolled over an embankment and into a wooded area. RP 3298-3308 The plaintiff was a passenger in Mr. Stanton's vehicle, along with another young female. The plaintiff was ejected from the vehicle during this accident. RP 3308-09, 3317.

The reason that Mr. Stanton was traveling so fast that he lost control of his pickup truck is that moments before, he was being pursued by defendant Eric Nelson, whom he feared, and who had been chasing after him at speeds in excess of 90 miles per hour, running a red light to continue the chase. RP 1566, 1572, 1576-1593, 3746-3749, 3761-3771.

This lawsuit was timely filed on November 13, 2012 and initially related only to the above-referenced two accidents. CP 1-7.

Unfortunately, the plaintiff was involved in yet another (third) accident on April 7, 2013, which occurred at the same location as the first accident referenced above.

As the plaintiff had not fully recovered from the injuries caused by the first two accidents, and received injury in the April 7, 2013 accident, a separate lawsuit was instituted against defendant Barker, under Pierce County Cause No. 15-2-06178-5, who admitted liability. RP 4095. The two lawsuits were consolidated into the present case for trial purposes.<sup>2</sup>

Finally, while this lawsuit was well under way, on March 22, 2014 the plaintiff was involved in a fourth accident which occurred on an onramp to Interstate 5 south of the 45th Street overpass in the University District in Seattle, before the freeway bridge spanning Lake Union. RP 3437, 3844. On that date, plaintiff was a passenger in a vehicle being driven by Brittany Powell, which as a result of a flat tire, lost control causing it to strike another vehicle. RP 3844-3847.

---

<sup>2</sup> It is further noted that 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. RP An instruction on comparative fault **was not** given to the jury. RP

As a result of this (fourth) accident Ms. Hart received no appreciable injury.<sup>3</sup> Given the absence of anything but *de minimis* injury the plaintiff was extremely reluctant to bring a claim and/or file suit relating to this fourth accident. Unfortunately, the already named defendants in this action amended their Answers to include an "empty chair" defense identifying the fourth accident and Ms. Powell as being a potential "empty chair" in that regard. CP 786-98 As a result, the plaintiff had no choice but to amend her Complaint to add Ms. Powell as a party defendant to this lawsuit in order to avoid the potential dilution of potential damages and/or the breaking of joint and several liability, otherwise available to a fault-free plaintiff. CP 783-85, 989-1001, 1033-38.

At the close of the evidence, Ms. Powell's Motion for Judgment of Law was granted by the trial court on the grounds that there was insufficient proof to establish that the March 22, 2014 accident was a by-product of negligence. RP 4018; CP 2393.

---

<sup>3</sup> The evidence at the time of trial established that as a result of this collision the plaintiff missed one physical therapy visit (did not accrue any additional medical bills as a result of that accident) and at best had a minor aggravation of her ongoing symptoms related to the prior accidents. RP 1792, 2084, 2859; EX 59, 71 Following this collision, the plaintiff continued on with the same medical treatment that was already scheduled prior to the fourth accident and defense testimony at time of trial established that over the course of the next weeks and months following this accident, that plaintiff's ongoing symptoms slightly improved. RP 3905-06.

Following the delays engendered by the addition of parties to this lawsuit due to the two accidents occurring after initial filing, and protracted pretrial proceedings, this case was called for trial on January 8, 2018 and concluded with a Jury Verdict in plaintiff's favor on February 22, 2018. RP 4-4438 Within their verdict, the jury found in favor of plaintiff and against defendants Prather and Knauer regarding the first accident. CP 2559-2562. With the jury's verdict regarding the first accident, in combination with either admissions and/or trial court rulings, it was fully determined that plaintiff was "fault-free" with regard to all four accidents. Despite the fact that plaintiff was fault-free, and a judgment was to be entered against the defendants, contrary to RCW 4.22.070(1)(b) the Court entered a judgment only severally, against those defendants whom judgment could be entered.<sup>4</sup> RP 4446-48; CP 2731-2741.

The trial court's failure to enter the judgment "jointly and severally" was simply the final error committed by the trial court in a case,

---

<sup>4</sup> The court had previously found as a matter of law that there is no other potential "empty chairs" who can be subject to a fault allocation under RCW 4.22.070. Naturally, 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.

as discussed below, which was marred by a number of instructional errors and egregious jury misconduct that the trial court failed to remedy.

In this case, jury deliberations commenced on February 14, 2018 and concluded on February 22, 2018, when the jury rendered its verdict. While the jury was deliberating it promulgated a number of jury notes which exhibited a substantial amount of confusion regarding the Court's instructions which had been subject to a myriad of exceptions by the plaintiff. It also became apparent that the jury was potentially deadlocked and dysfunctional. (Appendix No. 1) CP 2485-87, 2512-14, 2518-2523.

Plaintiff's counsel, following the verdict, had an opportunity to discuss what had transpired with a number of the jurors. The results of such investigation was memorialized in two jurors' declarations which were unrebutted by any defendant and which, established that even before deliberations commenced, jurors had ignored the trial court's repeated admonishments to not discuss the case, not to do independent research, and to not let inappropriate biases come into play during the deliberation process. (Appendix No. 2 and Appendix No. 3) See, e.g., RP 522, 599, 630, 795, 902, 1032, 1126, 1174, 1385, 1440, 1837, 2237, 3413, 3659, 3827, 4007.

Specifically, within the Declaration of Presiding Juror, Kristen Coalman, it was learned that well before deliberations the jurors were

inappropriately discussing witness testimony and their impressions of witnesses. CP 2758-2760. She observed that even before any evidence was presented, one of the jurors was labeling the plaintiff an "ambulance chaser," simply because she had been involved in four accidents. CP 2762, 3030. The juror had extremely negative opinions about the plaintiff and her mother from the outset. Ms. Coalman indicated that a number of the male jurors did not want to find against Defendant Emily Prather because they thought she was "pretty" or "sweet looking." CP 2761, 2764, 3029.

Additionally, Presiding Juror Coalman observed that the female jurors, (who were a minority on the deliberation panel), were generally treated in a sexist, misogynistic and demeaning manner by a number of their male cohorts.<sup>5</sup> CP 2760.

In further defiance of the Court's repeated admonishments not to do so, Presiding Juror Coalman recounted that a number of the jurors, (approximately four or five), admitted that they had gone on to the internet and reviewed Rebekah Hart's Facebook page and discussed what they saw with their fellow jurors. CP 2760, 3029. This is particularly significant on consideration of the fact that the defense submitted a number of photographs that had been posted on Facebook by the plaintiff as part of

---

<sup>5</sup> A number of Presiding Juror Coalman's allegations were corroborated by her fellow juror, Kenneth Wiebe.

the evidence in the case. When admitting such photographs as evidence, the Court ruled that the "comments" attached to such photographs were inadmissible and the comments were redacted from the exhibits admitted into evidence. EX 327-355. In other words, by reviewing the plaintiff's Facebook page the jurors accessed specific information that the trial court had ruled inadmissible. Additionally, at least one of the jurors who resided at or near the area where the second accident occurred, imparted to fellow jurors extrinsic information (matters outside of the evidence) relating to the roadways involved in the Stanton/Nelson high speed chase, and his version of time/distance analysis. CP 2761, 3029.

Armed with such information the plaintiff sought a new trial pursuant to CR 59, based on jury misconduct and other significant grounds. CP 2752-2870, 2871-2966, 2961-3009. In response to the juror misconduct aspect of the plaintiff's CR 59 motion, none of the defendants submitted contrary declarations from any other juror.

Yet, despite the absence of any contrary proof, the trial court denied plaintiff's CR 59 motion and made no effort to investigate and/or explore the validity of the information it was provided.

Additionally, as borne out by the record, the trial court engaged in a number of instructional errors and during deliberation submitted to the jurors a "revised" Verdict Form which included dismissed defendant

Brittany Powell's "fault", which all parties agreed should not have been part of the Verdict Form. (Appendix No. 4) CP 2496-2500, 2559-2562; RP 4297-98. The trial court's *sua sponte* decision to revise the Verdict Form was subject to objection by the plaintiff, 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; RP 4297-98.

As a result, the jurors inexplicably allocated "20 percent fault" to Brittany Powell who, the Court had previously determined, as a matter of law, was not negligent. Yet, the trial court effectively treated dismissed Defendant Powell, who had done nothing wrong, as if she was an "empty chair."<sup>6</sup> This is only one of the troubling aspects of a jury verdict that is inconsistent and impossible to clearly understand, unduly complex, confusing, and subject to an unclear "revised verdict form" the trial court manufactured, and gave to the jury after deliberations had already begun.

Jury questions, submitted to the Court during deliberation and the verdict finding Mr. Nelson negligent but assigned no "proximate cause," makes it quite clear that the trial court's instructional errors substantially

---

<sup>6</sup> The jurors' 20 percent allocation of fault to Ms. Powell, is inexplicable given the evidence presented at time of trial that plaintiff received little if any injury in the March 22, 2014 accident. In other words, even if appropriate, the 20 percent allocation is contrary to the evidence and not supported by "substantial evidence".

impacted the result in this case. CP 2560. Over plaintiff's objection, the trial court gave **two almost identical intervening-superseding cause instructions**. CP 2549-2550. Not only were such instructions unduly redundant, but also, they were unsupported by the evidence. Indeed, given the evidence presented at time of trial, the trial court should have determined that Defendant Nelson was negligent as a matter of law. RP 4067-4081.

Finally, by way of introductory comments, even though it was undisputed below that the plaintiff suffered disability as a result of her accident-related injuries, the trial court failed to instruct the jury on "loss of earning capacity," the failure of which alone, warrants the grant of a new trial. RP 4201; CP 2553.

In sum, this unfortunate plaintiff received a verdict that was tainted by juror misconduct and a number of significant trial court errors.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignments of Error**

1. The trial court erred by failing to enter judgment on the jury verdict jointly and severally. CP 2731-2741
2. The trial court erred by failing to grant a new trial and/or an evidentiary hearing on the issue of jury misconduct, when the undisputed

evidence established that repeated acts of misconduct occurred before and during trial deliberations.

3. The trial court erred by giving two intervening-superseding cause jury instructions which contained almost identical language, (Courts Instruction No. 23 and 24), which were unsupported by the evidence, and which served to prejudicially overemphasize Defendants theory of the case. CP 2549-2550.

4. The trial court erred in giving Court's Instruction No. 23. (Appendix No. 5) CP 2549

5. The Trial court erred in giving Court's Instruction No. 24. (Appendix No. 6) CP 2550

6. The trial court erred by Court's instruction on No. 27, which excluded the damages element of "loss of earning capacity," when substantial evidence supported the giving of such instruction (Appendix No. 8) CP 2553

7. The trial court erred by giving, *sua sponte*, a revised jury verdict form, after already instructing the jury once and after deliberations had already begun, which was unduly complex, misleading and confusing, and which misstated the law. (Appendix No. 4) CP 2559-2562

8. The Trial court erred by *sua sponte* revising the verdict form in a manner which permitted an allocation of fault to defendant

Brittany Powell, who had been dismissed from the case as a matter of law, due to insufficient evidence that she engaged in any act of negligence or any other conduct falling within the definition of "fault" set forth within RCW 4.22.015. (Appendix No. 8) CP 2526

9. The Trial court erred by deducting from the final judgment a 20 percent allocation of fault to dismissed defendant Brittany Powell, when such an allocation of fault was unsupported by substantial evidence. (Appendix No. 9 and Appendix No. 10)

10. The trial court erred by failing to grant plaintiff's Motion for Judgment as a Matter of Law, or a new trial, as to the negligence of Eric Nelson, when the undisputed facts established that his grossly negligent acts were a concurrent cause of a single-car collision which resulted in plaintiff's injuries. RP 4067-4081

11. The Trial Court erred in failing to grant plaintiff's Motion for a New Trial due to instructional error and jury misconduct.

12. The trial Court erred by giving jury instructions which were misleading, confusing, which mis-stated the law, and which in combination with the revised verdict form resulted in an inconsistent and unintelligible jury verdict. (Appendix No. 4; Appendix No. 13)

**B. Issues Pertaining to Assignment of Error**

1. Did the trial court misapply RCW 4.22.070(1)(b), which provides for entry of a judgement jointly and severally when there was (1) “a fault free plaintiff,” and (2) multiple defendants “against those defendants against whom judgment was entered,” when it was undisputed that either through jury verdict, admission, or a ruling of the trial court, it had been determined that plaintiff was “fault free” and affirmative judgments were being entered against multiple defendants who were found liable for the injuries and damages suffered by plaintiff?

2. Did the trial court err by *sua sponte* providing to the jury a revised verdict form, after deliberations were already ongoing, which permitted it to allocate fault to a defendant it had previously dismissed as a matter of law and thereafter erroneously deducting from the final judgment the percentage of fault allocated to that dismissed defendant?

3. Can a dismissed defendant, who the Court ruled engaged in no action falling within the definition of “fault” provided by RCW 4.22.015 be allocated fault under the fault allocation scheme set forth within RCW 4.22.070?

4. Did the trial court err by *sua sponte* revising the verdict form to include a previously-dismissed defendant as a party toward whom fault could be allocated when such revision, along with the instructions

created a verdict form which was misleading, confusing, misapplied the law and invited an inconsistent result?

5. Did the trial court commit reversible error by failing to grant plaintiff's motion for a new trial pursuant to CR 59(a)(2) due to jury misconduct, when undisputed evidence submitted before the trial court established that (A) members of the jury repeatedly and deliberately defied the trial court's instructions and admonishments not to discuss the case prior to beginning of its deliberations; (B) went on the Internet and researched plaintiff's Facebook page independently; (C) considered extrinsic evidence regarding one of the accident sites; and (D) made comments to one another indicating gender bias; or (E) bias against the plaintiff because she had had simply been involved in four automobile accidents, calling plaintiff an "ambulance chaser" even before any evidence was submitted in the case?

6. Did the trial court err by giving two nearly identical intervening-superseding cause instructions which were unsupported by the evidence and which served to overemphasize one or more of the defendant's theories of the case to plaintiff's prejudice and detriment?

7. Did the trial court err by failing to grant judgment as a matter of law on plaintiff's claim against Defendant Nelson when the undisputed facts established he was involved in a car chase with defendant

Stanton, whose reaction to Mr. Nelson's behavior was to drive recklessly in an effort to escape, causing a single car accident which injured the plaintiff (who was a passenger in the vehicle) ?

8. Whether the trial court erred by failing to instruct the jury on "loss of earning capacity," when evidence was presented before the jury which established that plaintiff, due to her accident-related injuries, suffered sufficient disability that she was unable to engage in a variety of earning activities, including being a chef, a profession which she has sought out and acquired specific education and training?

### **III. STATEMENT OF THE CASE**

#### **A. PERTINENT FACTS**

The first accident on March 1, 20019, the one in which jury found the defendants Prather and Knauer liable, involved a very significant and heavy impact collision. See, Ex. Nos. 4, 5, and 7. Although plaintiff declined treatment at the scene, within hours she was seen at St. Anthony's Prompt Care reporting pain and visible bruising to her right forearm and both knees. See, Ex. Nos. 12 and 13. On March 3, 2009 she reported to her primary care physician Lowell C. Finkleman, M.D. that she was suffering from persistent neck pain, headaches, right scapular pain, left shoulder pain, facial TMJ pain and chest pain as well. Dr. Finkleman at

that time noted multiple contusions of her knees and upper extremities and his physical exam verified muscle spasm and pain. RP 820-30; EX 16B.

Upon referral from Dr. Finkleman or others over the course of the next many months, Ms. Hart underwent chiropractic care, massage therapy, and physical therapy in an effort to treat her accident-related injuries. Unfortunately, up to September 15, 2009 Ms. Hart continued to suffer from "persistent daily headaches" that first arose immediately following the accident. RP 877-79. As a result, Dr. Finkleman recommended that Ms. Hart see Dr. John Mishko a chiropractor who specializes in upper cervical injuries and treatment. RP 879.

This is significant because the plaintiff was the in the care of Dr. Mishko on December 21, 2009, the date before the second accident involving Mr. Stanton and Mr. Nelson. On December 21, 2009 the plaintiff reported to Dr. Mishko mid-back pain, right shoulder pain into the neck, and cervicogenic headaches. RP 1345.

As mentioned above, on December 22, 2009 the plaintiff was involved in a high-speed chase resulting in a single-car collision. The vehicle in which plaintiff was a passenger, a Toyota Titan pickup truck was destroyed in the accident. Ex. No. 96. The genesis of this accident began as a harmless prank which occurred at the residence of defendant

Nelson which he shared with Alison Sluka, the mother of an Alan Sluka, who like the plaintiff, attended a local Gig Harbor High School.<sup>7</sup>

Earlier that evening the plaintiff was with defendant Stanton and a number of fellow high schoolers, including Chris Patton, who years later became the plaintiff's husband. RP 1451. Mr. Patton was a friend of Alan Sluka, and between them they had a history of playing practical jokes and pranks upon one another. After taking the Titan out "four wheeling" the teens went to the Sluka residence and pulled a harmless prank which ultimately resulted in confrontation out on the street in front of the Sluka home. RP 1456.

After committing the prank at the Nelson/Sluka home, the teens separated into two vehicles and met in the parking lot at a Papa John's Pizza Restaurant location in Gig Harbor. RP 490. At that point in time only the plaintiff, and another female teenager were in the Stanton vehicle. The teens were socializing at Papa John's. Alan Sluka pulled up in a Honda, aggressively cutting off the Patton vehicle's lane of travel. RP 15456-57.

In order to avoid conflict, the Patton vehicle and the Stanton vehicle drove off in separate direction – with Sluka in hot pursuit of

---

<sup>7</sup> After the event Mr. Nelson and Alison Sluka were married. RP 3737

Mr. Stanton's Titan. RP 1556-57, 1564-65. Mr. Stanton perceived that Mr. Sluka was "chasing" him. *Id.*

Unbeknownst to plaintiff and her companions, after the confrontation at the Nelson/Sluka residence, Alan Sluka and Mr. Nelson's son, Matthew Wencel, got into their vehicles and drove off after the pranksters. In response, Mr. Nelson allegedly got into his work truck, a Ford F-150, in order to try to "retrieve Alan and Matthew". RP 3741. According to Mr. Stanton after Papa John's, Mr. Sluka pursued Mr. Stanton down 56<sup>th</sup> which turned into Filmore, turning down to Wollochet. RP 564. As Sluka was pursuing Stanton, they were observed by Mr. Nelson who was driving in the opposite direction. RP 3743. Mr. Nelson observed that the Sluka and Stanton vehicles were traveling 60 to 70 miles per hour. RP 3757. He turned his vehicle around, and engaged in a high speed pursuit. According to Mr. Nelson, it was his intention to intercede, and stop Sluka's pursuit. Nelson accelerated up to 90 miles per hour, passing the Sluka vehicle and placed himself between the Sluka Honda and the Stanton Titan. RP 3762; 3765. It was undisputed the speed limit on the roadways in question was 30 miles per hour. RP 3761. Mr. Stanton, who was already scared of Mr. Nelson, and was trying to drive fast enough to get separation, observed Mr. Nelson's aggressive actions and believed that Mr. Nelson was chasing him and as a

result he was "terrified". RP 1565-1573. Mr. Nelson admitted at the time he placed himself between Mr. Sluka and Mr. Stanton's vehicle so he was 8 to 10 car lengths behind the Stanton vehicle. RP 3771.<sup>8</sup>

At trial, Mr. Nelson admitted that he was driving so fast that he could not stop at a red light at 56<sup>th</sup> and Wollochet while chasing the Stanton vehicle, and careened through the light. RP 3765. At that time he was driving 90 miles an hour, in a 30 mile per hour zone; and he admittedly had 35 gallons of fuel in the truck, as well as 90 gallons of diesel in a fuel tank mounted in the truck bed. RP 3765-66. Both Mr. Stanton and the plaintiff observed Mr. Nelson approaching at a high rate of speed behind them and running the above-mentioned red light. RP 1570-1594; 3304. The plaintiff also observed Mr. Nelson's vehicle pass Mr. Sluka's vehicle. RP 3301. At trial plaintiff recalled seeing the headlights of the Nelson truck up to the point that Mr. Stanton turned onto Arntondale Dr. N.W., the roadway in which the accident occurred. RP 3304-3306.

After Mr. Nelson blew through the red light at 56<sup>th</sup> and Wollochet he observed Mr. Stanton's Titan truck lose control and fishtail. RP 3768. Mr. Stanton, who still perceived that Mr. Nelson was in hot pursuit, turned

---

<sup>8</sup> It was undisputed that Mr. Sluka after being passed by his soon-to-be step-father, discontinued his pursuit and Mr. Nelson admitted that Alan Sluka did nothing to cause or contribute to the subsequent accident of the Stanton vehicle. RP 3753-3759.

right off Wollochet Drive onto Arntondale and, according to plaintiff, rapidly accelerated up to 90 miles per hour. RP 3306. At that point Mr. Stanton lost control, overcorrected and careened off the roadway in the above-referenced single car accident.

Mr. Stanton admitted at trial that he was partially responsible for the accident and testified that Mr. Nelson contributed to the accident because he was terrified of Mr. Nelson and trying to get away from him. RP 1594. Mr. Nelson contended that he abandoned the pursuit around a mile from the accident site location by taking a turn onto Eastbay Drive and heading back home. RP 3767.

As a result of the December 22, 2009 accident Ms. Hart suffered a number of acute injuries including cuts and bruising and a laceration on her forehead. She suffered an "exacerbation" of her thoracic, lumbar and cervical strain injuries. The accident also produced an increase in her already symptomatic headache condition. RP 899. After Ms. Hart went through a number of modalities of treatment in an effort to address her chronic headache issues, she eventually came under the care of Dr. Natalia Murinova, the Director of the University of Washington Neurology Headache Center. RP 2406. Dr. Murinova diagnosed Ms. Hart as having post-traumatic cervicogenic headaches with migraines. RP 2468. Dr. Murinova subsequently recommended Ms. Hart to a pain management

specialist Dr. Virtaj Singh, who tried a number of treatment modalities to try to resolve and/or decrease Ms. Hart's cervicogenic headache condition. RP 2272-3. He engaged in diagnostic nerve block testing, which he considered to be the "gold standard" in diagnosing upper cervical injuries. He ultimately concluded that Ms. Hart suffered from a C-2/C-3 facet joint injury. RP 2298.

Dr. Singh, after providing his own care, referred Ms. Hart to an interventional pain management specialist Dr. Jason Attman who over the years conducted medial branch nerve blocks, radiofrequency neurotomies and nerve ablations which served to provide Ms. Hart with only temporary relief for her accident-related condition. RP 2308.

With regard to the April 7, 2013 accident, Dr. Murinova noted that as a result of this accident the plaintiff suffered an increase in neck and back pain, along with headaches. RP 2455. Dr. Murinova testified that it would be impossible to separate out which accident "caused" Ms. Hart's traumatically induced cervicogenic headaches, which were a byproduct of the cumulative trauma. She diagnosed the headache condition as being permanent and incurable. RP 2476, 2490, 2492, 3219. With regard to Ms. Hart's condition following the March 22, 2014 accident it is undisputed that at most, she was sore for a couple of days. RP 2859. It

was undisputed at trial that following the March 22, 2014 accident Ms. Hart's headache condition mildly improved. RP 3905-06.

**B. FACTS RELEVANT TO VERDICT FORM**

During the course of trial, the parties and the court struggled on the issue regarding how to formulate a proper verdict form given the multiplicity of accidents involved in this case. The trial court's instructional conference, which it treated as being part of the objections and exceptions to instructions, started the afternoon of February 12, 2018, and was completed the afternoon of February 13, 2018, immediately prior to the commencement of closing arguments. During the course of such conference, plaintiff's counsel repeatedly urged the court to not include the March 22, 2014 accident on the verdict form because it would permit the jury to potentially treat Ms. Powell, who the trial court had found not to be negligent, as an "empty chair". RP 4131-4133. Plaintiff's counsel observed "You're allocating to an empty chair when there's no liability, Your Honor" to which the trial court retorted "Well, the Court of Appeals will just have to reverse me on this one". RP 4131-33.

During the course of such discussions, the parties submitted to the trial court a multitude of proposed verdict forms. CP 2341-2345; 2401-2403; 2475-2477. Plaintiff's final proposed version of the verdict form paralleled the suggested form of the WPI's as closely as possible, and did

not include either the name "Brittany Powell" or "March 22, 2014" accident within its allocation provision. CP 2475-77 At the close of court business on February 12, 2018, the court directed the parties to submit additional verdict forms for its consideration. See, RP 4169.

As conceded by the trial court, ultimately the trial court itself drafted the verdict form. RP 4446. As of February 13, 2018, the day closing arguments began, the court had not finalized its verdict form, indicating that, despite closing arguments were occurring, the verdict form would be given to the jury "later". RP 4199. The following day, on February 14, 2018, the date selected for the completion of closing arguments, the court for the first time presented its proposed verdict form. At that point in time all parties agreed that the verdict form **could not include an allocation to the March 22, 2014 accident.** RP 4297-98. As a result, a verdict form was given which **did not include the Brittany Powell accident of March 22, 2014 for allocation purposes.** CP 2496-2500.

As the jury notes attached hereto as Appendix No. 1 indicate, the jury struggled with the court's instruction and the verdict form. When most of the jury questions promulgated during deliberations were answered, Judge Nelson, the trial judge, was on vacation and the responses to such jury questions were handled by substitute judges.

On February 20, 2018 Judge Nelson returned from her hiatus and addressed how to respond to Jury Questions Nos. 6 and 7. (RP February 20, 2018 - Pages 3-6. Her response to such questions was to manufacturer a new "revised" verdict form which, despite the previous agreement of the parties to the contrary, included the "March 22, 2014" accident on the verdict form for allocation purposes. *Id.* Pages 9-12. According to the court, such an addition was not an allocation to Brittany Powell, but rather a way for the jury to address what, if any, injuries were "proximately caused" by the fourth accident, even though the verdict form, even as revised, did not ask that specific question. *Id.* Page 13-16. Once again plaintiff's counsel took exception to the verdict form, for reasons that were clearly apparent to the trial court. *Id.* Page 18.

Despite the parties' previous agreement to the contrary, as the trial court was seating an alternate juror on February 20, 2014 and instructing the jury to begin their deliberations anew, the trial court gave to the jury the "revised verdict form" which it characterized to the jury as one with "some minor revisions". *Id.* Page 25. As mentioned above, on February 22, 2018 the jury came back with its verdict using the "revised" verdict form. CP 2554-2562.

#### IV. ARGUMENT

##### A. The Trial Court Erred by Failing to Enter Judgment on the Jury Verdict "Jointly and Severally."

The question of whether or not a judgment can be entered "jointly and severally" requires an interpretation of RCW 4.22.070(1)(b), which is a matter of statutory construction subject to *de novo* review, as an issue of law. See *Afoa v. Port of Seattle*, 191 Wn. 2d 110, 119, 421 P.3d 903 (2018). As noted at Page 119 of the *Afoa* opinion, the 1986 tort reform act generally abrogated the common law rule of joint and several liability, in favor of "proportionate liability". *Id.* Thus, RCW 4.22.070, which is the centerpiece of the 1986 amendatory legislation requires all liability be apportioned, unless a listed exception applies in which joint and several liability is retained. *Id.* citing to *Kotler v. State*, 136 Wn. 2d, 437, 443, 963 P.2d 834 (1998). A specific exception to proportionate liability is set forth in RCW 4.22.070(1)(b) which provides:

The liability of each defendant shall be several only and shall not be joint except: . . . (b) if the finder of fact determines that the claimant or party suffering bodily injury or incurred property damage was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of the proportionate share of the claimant's total damages.

It has long been recognized that when a plaintiff is fault-free, the individual defendants against whom judgment has been entered are jointly and severally liable, unless there is an "empty chair" in the case. See,

*George Sollitt Corp. v. Howard Chapman Plumbing and Heating*, 67 Wn. App. 468, 474-75, 836 P.2d 851 (1992), ("joint and several liability still applies when there is no comparative fault"); *see also*, *Washburn v. Beatt Equipment Co.*, 121 Wn. 2d, 246, 291-95, 840 P.2d 860 (1992). In this case, the trial court determined, as a matter of law that there were no empty chairs, and the only potential individuals who could be liable for plaintiff's injuries, were those named in this lawsuit.<sup>9</sup>

In a multiple defendant case, when a plaintiff is fault-free, and judgment is entered against two or more defendants, they are jointly and severally liable and the plaintiff is entitled to recover the total amount of judgment against any defendant, when the jury finds a defendant "to any degree" negligent. *See McCluskey v. Handorff-Sherman*, 68 Wn. App. 96, 104, 841 P.2d 1300 (1992) affirmed, 125 Wn. 2d 882 P.2d 157 (1994); *see also*, *Young Tao v. Heng Bin Li.*, 141 Wn. App. 825, 830, 166 P.3d 1263 (2007) ("because [plaintiff] did not contribute to his damages he is a fault-

---

<sup>9</sup> Co-defendants Powell and Nelson were named in this lawsuit. With regard to defendant Powell the court found there to be insufficient evidence of her negligence to warrant submitting her liability for Ms. Hart's injuries to the jury. RP 4018; CP 2393 With regard to defendant Nelson the jury rejected plaintiffs' claim of negligence. CP 2560 A party cannot be subject to a fault allocation under RCW 4.22.070 unless they engage in an act falling within the definition of "fault" set forth within RCW 4.22.015. *See, Smelser v. Paul*, 188 Wn. 2d 648, 398 P.3d 1086 (2017). A defendant in a negligence action does not have a right to have fault allocated against another party or entity under RCW 4.22.070(1) absent proof that the other party or entity engaged in "fault" as defined by RCW 4.22.015. *See, Joyce v. Department of Corrections*, 116 Wn. App. 569, 594, 75 P.3d 548, affirmed in part, reversed in part, 155 Wn. 2d 306, 119 P.3d 825 (2005) citing to *Adcox v. Children's Orthopedic Hosp.*, 123 Wn. 2d 15, 25, 864 P.2d 921 (1993).

free plaintiff and, therefore, if these defendants are liable, they are jointly and severally liable"). Stated another way, when a plaintiff is fault-free, defendants "against who judgment is entered" are jointly and severally liable for the total of the claimant's damages. *See, Standing Rock Homeowners v. Misich*, 106 Wn. 2d 231, 245, 23 P.3d 520 (2001).

In this case, the plaintiff was found to be fault-free either by way of admission, court ruling, and/or the jury's determination relating to the first automobile accident in which defendants Prather and Knauer were found to be at fault. Thus, the judgment should have been entered jointly and severally by the trial court and it was fundamental error for it not to do so.

**B. The Trial Court Erred by *Sua Sponte* Revising the Verdict Form During Jury Deliberation Adding Dismissed Defendant Brittany Powell to the Verdict Form for Fault Allocation Purposes and Thereafter Deducting the Amount of "Fault" the Jury Attributed to this Non-Negligent Individual when Entering Final Judgement.**

Generally, when examining a special verdict form for reversible error, the same standards applicable to the jury instructions apply. *Canfield v Clark*, 196 Wn. App. 191,199,385 P.3d 156 (2016). Verdict forms and jury instructions are not erroneous if they permit each party to argue their theory of the case, are not confusing or misleading, and when read as a whole, properly inform the jury of the applicable law. *Id.*

Instructions are subject to *de novo* review for claimed errors of law. See, *State v Wang*, 5 Wn. App. 2d. 12, 424 P.3d 125, (2018).

As referenced above, an individual or entity cannot be allocated fault under the terms of RCW 4.22.070 unless they have engaged in an act which falls under the definition of "fault" set forth within RCW 4.22.015. See, *Smelser v. Paul*, *supra*. RCW 4.22.015 under the heading of "fault defined" provides:

"Fault" includes acts and omissions, including misuse of a product, that are 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 reasonable failure to avoid injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

As made clear in the *Smelser* opinion, in order for a party to be "at fault," within this statutory scheme, it must be established that they breached a duty owed to the party claiming injury, in this instance the plaintiff.

Here, the court, prior to submitting the case to the jury, determined as a matter of law that there was insufficient evidence that Ms. Powell had breached any duty owed to the plaintiff as a byproduct of the March 22, 2014 accident. Thus, it was an error of law for the trial court to permit the

jury to allocate fault to Ms. Powell, a dismissed defendant, *See, Joyce v. State*, 116 Wn. App. at 594.<sup>10</sup>

Here, all parties agreed that Ms. Powell, who had been dismissed from the case, could not be on the verdict form for fault allocation purposes. Nevertheless, the trial court *sua sponte* added Ms. Powell to the verdict form after the jury had already engaged in substantial deliberations. It did so by including in Question 12 of the verdict form for fault allocation "the collision of March 22, 2014," (the Powell collision), and queried "what percentage of the 100 percent is attributable to the negligence or collision of each of the following ...".

The problem with the question as framed is that the court had already determined that there had been no negligence as it related to the March 22, 2014 collision, thus the jury was permitted to answer a question when the court had already determined that there was insufficient evidence for its consideration – the “fault” of Ms. Powell. This created confusion and an inconsistent verdict form.

Further, the inclusion of the March 22, 2014 accident within the allocation portion of the verdict form, made the instructions in total

---

<sup>10</sup> It is noted that the definition of fault within RCW 4.22.015 requires proof of negligence and/or other misconduct and not merely that some act or admission by a party was a proximate cause of injury. As shown by the *Smelser* opinion, proximate cause alone is insufficient to justify an RCW 4.22.070 allocation; and the breach of an actionable duty is a mandatory prerequisite.

confusing, misleading and inconsistent. Court's Instruction No. 25 told the jury it had found Ms. Powell to be non-negligent as a matter of law, as well as question No. 5 on the revised verdict form, which had "no" already typed into the verdict form, regarding Powell's negligence.

Confusingly, the court's revision of the allocation portion of the verdict form to include the Powell accident as something "attributable to the negligence" rendered the verdict form not only legally erroneous, but internally contradictory and contrary to instruction No. 25.

Further, instruction no. 25, already instructed the jury to consider the March 22, 2014 accident for calculation of damages purposes. Instruction No. 25 permitted the jury to use the March 22, 2014 accident to reduce the amount of damages numerically awarded on the "\$" lines in the verdict form. By allowing for a fault percent allocation for the March 22, 2014 accident and then using that percent to reduce the amount of judgment entered by 20% potentially resulted in a double reduction for that same damage element.

The trial court further erred in reducing the damages provided by the jury by the 20 percent allocated to the Powell accident, which never should have been allocated within the jury verdict form in the first place, essentially treating Ms. Powell as if she was an "empty chair." Such treatment was obviously erroneous, because even in the "empty chair"

scenario there must be proof the unnamed individual, or entity, did a legally actionable wrong, See, *Mailloux v State Farm*, 76 Wn. App 507, 515, 887 P.2d 449 (1995). (Burden is on party asserting an empty chair defense to prove the non-party is liable for plaintiff's injuries).

At a minimum the appellate court should remand this matter back to the trial court with direction to have the jury verdict entered "jointly and severally" and for the entirety of the judgment without the inappropriate and unauthorized 20 percent reduction.

**C. The 20 Percent Allocation of Fault by the Jury was Unsupported by Substantial Evidence and at a Minimum Warrants the Granting of a New Trial.**

A court may grant a motion for a new trial, if viewing the evidence in a light favorable to the non-moving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inferences therefrom to sustain the verdict for the non-moving party. See, *Mega v. Whitworth College*, 138 Wn. App. 661, 671, 158 P.3d 1211 (2007). "Substantial evidence" is defined as that quantum of evidence sufficient to persuade a "rational fair-minded person the premise is true". See, *Colings v. City First Mortgage Servs., LLC*, 177 Wn. App. 908, 1031, 317 P.3d 1047 (2013), citing to *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn. 2d. 873, 879, 73 P.3d 369 (2013).

In this case, there was substantial undisputed evidence that as a result of the three prior collisions, which occurred before the Powell accident of March 22, 2014, Ms. Hart had suffered acute injuries in each that were painful, life-altering, and which developed into a chronic pain and headache syndrome, which, when symptomatic, were substantially debilitating. Ms. Hart had undergone extensive medical treatment prior to the Powell accident, including care at the University of Washington Neurology Headache Center for a disabling headache condition, and underwent cervical injections as well as other treatment which had provided no lasting result.

In marked contrast there is very little evidence, if any, that as a result of the March 22, 2014 accident Ms. Hart had anything but a short-term increase in her already existing symptomology for which she was already under ongoing medical care and supervision. It was undisputed that as a result of the Powell accident Ms. Hart missed one physical therapy appointment, (thus not accruing any additional medical billings related to that accident), and had no change in her treatment which had been planned before that fourth accident had ever occurred.

Indeed, Dr. Lawrence Murphy, a neurologist, testified that Ms. Hart's symptoms actually slightly improved after the March 22, 2014 accident involving Ms. Powell. RP 3905-3906. According to the

defense's own expert, Dr. Rappaport, after the March 22, 2014 accident, the plaintiff was sore for a few days. RP 2859.

Given such undisputed facts, an allocation of "20 percent" to Ms. Powell, as it relates to Ms. Hart's injuries simply has no rational factual basis and is unsupported by "substantial evidence." Such an allocation of "20 percent" likely was based on the substantial amount of bias and negative animus the jury irrationally displayed towards plaintiff because she was a victim of multiple accidents. Frankly, the allocation of 20% fault to Ms. Powell, and the fault allocations in total, have no real rhyme nor reason, was arbitrary and capricious and can only be readily explained by something other than the facts and evidence presented at the time of trial.

Assuming that such a fault allocation was permissible (it was not), it was error for the trial court not to grant the plaintiff's motion for a new trial on the basis that it was unsupported by the evidence.

**D. The Trial Court Erred by Failing to Grant Plaintiff a New Trial Based on Juror Misconduct.**

It is recognized that the right to a jury trial guaranteed by Article 1, Section 21 of the Washington State Constitution means a right to an unbiased, unprejudiced jury free of misconduct. *See, Smith v. Kent*, 11

Wn. App. 439, 443, 523 P.2d 446 (1974); *See also, State v. Gaines*, 194 Wn. App. 892, 896, 380 P.3d 540 (2016). (Appendix No. 12)

Consideration of novel or extrinsic evidence constitutes juror misconduct and can require a new trial. *State v. Balisok*, 123 Wn. 2d 114, 118, 886 P.2d 631 (1994). It is misconduct of a juror to introduce extrinsic evidence into deliberations. *Id., see also, Kuhn v. Schnall*, 155 Wn. App. 560, 575, 228 P.3d 828 (2010). Such misconduct will entitle a party to a new trial if there is a reasonable ground to believe the party has been prejudiced. *Id.* The Court must make an objective inquiry into whether the extrinsic evidence could have affected the jury's determination, not a subjective inquiry into the actual effect of the evidence on the jury. *Id.* Any doubt that misconduct affected the verdict must be resolved against the verdict. *Id.*

Extrinsic evidence is "information that is outside all the evidence admitted at trial, either orally or by document." *Id.*, citing to, *Richards v. Overlake Hospital Med. Ctr.*, 59 Wn. App. 226, 796 P.2d 737 (1990).

It is well recognized that a juror undertaking independent Internet research is jury misconduct because such research constitutes "extrinsic evidence". *See, State v. Boling*, 131 Wn.App. 329, 333, 127 P.3d 740 (2006). *See also, State v. Arndt*, 5 Wn. App. 2d 341, 426 P.3d 804 (2018). Indeed, WPI 1.01, which was read to the jury in this case, emphasizes that

it is highly inappropriate for jurors to consult Internet resources at any time during trial proceedings. WPI 1.01 in its pertinent provisions provides:

During the trial, do not try to determine on your own what the law is. Do not seek out any evidence on your own. Do not consult dictionaries or reference materials. Do not conduct any research into the facts, the issues, or the people involved in this case. **This means you may not use [Google] or other internet search engines [Internet resources] to look at anything at all related to this case.** Do not inspect the scene of any event involved in this case. If your ordinary travel results in passing or seeing the location of any event involved in this case, do not stop or try to investigate. You must keep your mind clear of anything that is not presented to you in this courtroom. (Appendix No. 13) RP 630

The propriety of giving such instructions to the jury is explained in the comment to WPI 1.01 which provides that this is "[b]ecause it is jury misconduct to" "extrajudicially acquire case-specific information during the course of the trial". See, *State v. Tigano*, 63 Wn. App. 336, 341, 818 P.2d 1369 (1991).

In this case, the trial court, over the plaintiff's objections, admitted a number of pages from her Facebook account as exhibits in this case. (Ex. 112, 327-355) The court however took great care to exclude any and all "comments" from such Facebook exhibits.

As is self-evident, the defense believed that having such photographs, depicting plaintiff having the occasional "good time" aided the defense's cause in this case – presumptively under the speculative

theory that if she appears in photos like she is having “a good time” she really must not be “all that hurt.” Reviewing the entirety of plaintiff's Facebook page, which would have included access to the "comments" that the trial court excluded, by members of the jury, was obviously prejudicial to the plaintiff.

The curse of "extrinsic evidence" is that it is evidence which is "wholly outside the evidence received at trial, and thus not subject to objection, cross-examination, **explanation**, or rebuttal by either party". (Emphasis added), *Loeffelholv v. C.L.E.A.N.*, 119 Wn. App. 665, 680-81, 82 P. 3d 1199 (2004) (Grant of new trial affirmed on appeal. Juror engaged in misconduct by bringing "extrinsic" information before fellow jurors relating to government employee salaries).

Had the entirety of plaintiff's Facebook pages been placed into evidence, at least she would have been afforded an opportunity to explain whatever was presented therein. The jurors' improper action denied her such an opportunity, and it should be presumed that the inability to explain such extrinsic information was prejudicial.

The same is true with respect to information being provided by one of the jurors relating to the location of the December 22, 2009 accident. As indicated by the Declaration of Presiding Juror Coalman, a member of the jury, (if not more), openly discussed with other jurors their

observations regarding the roadways in question and provided factual information related to the area, including observations regarding the speeds a vehicle could have developed when turning corners, and the like. While it is clearly established that there is nothing inappropriate regarding a juror relying on their "personal life experience" during deliberations, it appears that here juror(s), imparted more information than that which would be generally available through "general life experience." The Juror undertook his own time/distance analysis which was not supported by the evidence at trial.

It has long been recognized that it is jury misconduct to visit the scene of an accident in a case involving an automobile accident. See *Woodruff v. Ewald*, 127 Wn. 61, 219 P. 851 (1923). Such unauthorized scene visits are improper because they deny a party an opportunity to meet or counteract in any manner, either by argument, explanatory evidence or request for cautionary instructions, any misimpressions regarding the scene of the accident at the time of the juror's visit might have erroneously suggested. *Id.*, See, also *Gardner v. Malone*, 60 Wn. 2d 836, 844-45, 376 P. 2d 651 (1962) (reversing trial court's denial of motion for new trial, due to jury misconduct, including an unauthorized visit to the accident scene).

Here, the juror's action went beyond a mere familiarity with the roadways in question, but included the imparting of case specific

information regarding the roadways such as how fast a corner could be taken. Such information goes beyond "general life experience" and is the kind of case specific extrinsic factual information that the rules prohibit jurors from considering. It is respectfully suggested the juror's actions in this instance "crossed the line" and warrants the grant of a new trial.

Once juror misconduct is shown, there is a rebuttable presumption that the information prejudicially influenced the jury. See *State v. Gaines*, 194 Wn. App. at 898. If misconduct is established, a presumption of harm mandates the grant of a new trial unless it can be shown beyond a reasonable doubt that extrinsic evidence did not contribute to the verdict. See, *Richards v. Overlake Hospital and Medical Center*, 59 Wn. App. at 273. In this case, a new trial should be granted based on one or more instances of juror misconduct relating to "extrinsic evidence". Unfortunately, there is more misconduct.

Below, it was undisputed that even before any substantive evidence was submitted before the jury, a member of the jury was, in defiance of the court's instructions, calling plaintiff an "ambulance chaser" because she was involved in four accidents. A trial by jury, one or more whose members are biased or prejudiced against a party, is not a constitutional trial. See *Robinson v. Safeway Stores*, 113 Wn. 2d 154, 159,

776 P. 2d 676 (1989). As discussed in *Robinson* when jurors are biased and prejudiced, they are incompetent as impartial jurors.

It is suggested that the same rule should apply when a juror violates their oath as jurors, which includes the duty to not permit inappropriate biases, including gender bias, from influencing their deliberations. See *Turner v. Stime*, 153 Wn. App. 581, 588-590, 222 P. 3d 1243 (2009); As shown by *Turner v. Stime*, when jurors make derogatory remarks about a party and/or their attorneys during deliberations, it is grounds for a new trial.

Labeling plaintiff an "ambulance chaser" before any substantive evidence was presented in the case, is indicative that the juror who used such terms had disqualifying biases. Had the plaintiff been aware of the existence of such bias prior to entry of the jury verdict in this case, clearly such juror, who believed the plaintiff to be an "ambulance chaser" without hearing any evidence, would have been subject to removal for cause. See, generally, *Bell v. Uribe*, 729 F. 3d 1052 (9<sup>th</sup> Cir. 2013).

Given the toxic nature of such a comment, and the jurors' willingness to discuss their opinions regarding the witnesses as being "liars" before deliberations even commenced, the trial court should have found such comments were so prejudicial (and indicative of bias), as to deny plaintiff her constitutional right to a fair trial.

Further, the trial court should have found troubling, as should this court, the fact that male jurors during the deliberations stated a preference for defendant Emily Prather because she was viewed as being physically attractive, which is indicative of a bias against plaintiff because she was perceived as being less attractive than Ms. Prather. Not only should such considerations be irrelevant in the minds of unbiased and unprejudiced jurors, but are also indicative of gender-based stereotyping, which should be viewed as having no place within our constitutionally mandated court system. Further, even if we assume a preference for someone who is attractive, over someone who is perceived as not, technically does not meet the definition of gender discrimination, it nevertheless should be considered, as a matter of public policy, an improper and inappropriate consideration for a jury to consider when deciding a case. Such considerations have nothing to do with the application of law to facts. It is suggested that such "misconduct" is at least as bad as having bias and prejudice against someone from the State of California. See e.g., *Robinson v. Safeway Store*, Supra.

Based on juror declarations submitted below, the trial court should have concluded that some members went out of their way to violate the court's instructions and admonishments not to discuss the case before deliberations, and to not conduct Internet research, and the like.

It has been noted in the criminal context that when such misconduct comes to the trial court's attention before a case is concluded, the court should inquire of the offending juror whether or not they would adhere to their oath in the future and not whether they can fairly weigh the evidence. See *State v. McCreven*, 170 Wn. App. 444, 482, 284 P. 2d 793, (2012).

Here, given the fact that the jurors' violation of their oath was not discovered until after the verdict, a query as to whether or not they would be able to adhere to their oath in the future would be of no help. It is suggested that standing alone, given the severity and multiplicity of the oath violations perpetrated by the jury panel in this case, prejudice should be presumed, warranting the grant of a new trial.

**E. The Trial Court Erred When It Gave Two Redundant Intervening-superseding Cause Instructions in This Case Which Were Unsupported by The Evidence. (Court's Instruction No. 23 and 24).**

In this case, the Trial Court gave two almost identical intervening-superseding cause instructions. Instruction No. 23, allowed the jury to consider whether or not subsequent car accidents potentially constituted intervening-superseding causes. Instruction No. 24, specific to the December 22, 2009 (second) accident, permitted the jury to consider

whether or not Mr. Stanton's driving was an intervening and superseding cause of defendant Nelson's negligence.

Although ultimately the jury found Mr. Nelson to be negligent, it found that his negligence was not the proximate cause of plaintiff's injuries and/or damages. Before reaching this determination, the jurors during deliberations asked a number of questions indicating that they were confused by Court's Instruction Nos. 23 and 24.

As a preliminary matter, it is noted that it was error for the trial court to give **two redundant instructions on the same subject matter**, which clearly favored the defense, and overemphasized the defense theory of the case. It has long been recognized within the State of Washington that the giving of instructions which emphasizes one party's theory of the case over another is erroneous and a basis for the granting of a new trial. See *Samuelson v. Freeman*, 75 Wn. 2d 894, 897, 454 P. 2d 406 (1969). As noted in *Samuelson*, "If the instructions on a given point or proposition are so repetitious and overlapping as to make them emphatically favorable to one party, the other party has been deprived of a fair trial." *Id.* Such a prohibition does not apply to what can be characterized as "minor redundancies" or "casual repetition" which may inadvertently and unavoidably exist within a court's set of instructions. *Id.*

In this case, there is simply no reason for the court to give two intervening-superseding cause instructions which served to do nothing more than to highlight the defendant's theories of the case, to plaintiff's prejudice. Repetitively giving such instructions, which by their very nature inherently favor the defense, even when given singularly, prejudiced the plaintiff, and is the likely reason that Mr. Nelson's grossly negligent actions were not found to be "a proximate cause" of the December 22, 2009 accident.

Beyond the repetitious nature of such instructions, these instructions never should have been given because they were unsupported by substantial evidence. The propriety of giving a jury instruction is governed by the facts of the case. *Hopkins v Seattle Pub. Sch.*, 195 Wn. App. 96, 108, 380 P.3d 584 (2016). It is reversible error to give an intervening-superseding cause instruction when it is unsupported by the facts of the case. See *Albertson v. DSHS*, 191, Wn. App. 284, 297-99, 361 P.3d 808 (2015). In this case neither court's Instructions 23 and 24 were supported by the evidence and should not have been given.

With regard to Instruction No. 24, it is specifically related to the December 22, 2009 accident, which involved a car chase/pursuit in which Defendant Nelson was pursuing a pickup truck driven by Defendant Stanton, in which plaintiff was a fault-free passenger. In the analogous

context of a police pursuit, Washington courts have found that a participant in a pursuit, who is not actually involved in an accident, can nevertheless be held liable under concurrent negligence principles when the other participant negligently injures a third party. See, *Mason v. Bitton*, 85 Wn. 2d 321, 354 P. 2d 1360 (1975). Under such principles "...[I]f two or more individuals commit independent acts of negligence which concur to produce the proximate cause of an injury to a third person, they are regarded as concurrent tortfeasors, and each is liable as if solely responsible for the injury caused by the current act of negligence." *Id.* at 326).<sup>11</sup> See, WPI 15.04. – Court’s Instruction No. 11. CP 2537

The reason why "concurrent cause" principles apply to car chase scenarios, and intervening-superseding cause principles have no application, is because of the nature of the relationship in such

---

<sup>11</sup> Under Washington criminal law, a participant in a car chase who is not involved in an accident, nevertheless can be held responsible for an accident involving the other participant resulting injuries, under an accomplice liability theory; See, *State v. Parker*, 60 Wn. App. 719, 726-27, 806 P. 2d 1241 (1991). In order to establish accomplice liability, the state must prove that the non-accident participant in the chase, by their action encouraged the other to perform an act of reckless driving which proximately caused death or serious injury. *Id.* Similarly, other jurisdictions have readily held that in the car chase/pursuit/street race scenarios that the participant who is not involved in an accident can nevertheless be held liable for the resulting injuries. See *Carney v. DeWees*, 70 A. 2d 142 (Conn. 1949); *Boytin v. Bennett*, 118 S.E. 2d 12 (N.C. 1961). These cases have held that liability can attach when the other participant knows that the driver involved in the accident's negligent or reckless conduct will be substantially encouraged by the non-accident participant's conduct. See generally, Restatement (2d) of Torts § 876 (1979); see also Restatement (2d) of Torts § 442A (1965) ("When the negligent conduct of the actor creates or increases the foreseeable risk of harm through the intervention of another force, and is a substantial factor in causing the harm, such intervention is not a superseding cause.").

circumstances. The relationship between the participants in a car chase is explained in *Suwanski v. Village of Lombard*, 794 N.E. 2d 1016 (Ill. App. 2003). In *Suwanski*, a police pursuit case, it was noted that concurrent negligence principles apply in a pursuit situation because without the concurrent negligence of both persons the accident would not have occurred. *Id.* at 1022. *Suwanski* describes the relationship between the participants in a chase scenario to be as follows:

A police pursuit is unique in the sense that it can occur only if two vehicles are involved, the car that is fleeing and the car that is chasing. It is essentially symbiotic; both vehicles are necessary to have a chase. Thus, from the standpoint of causation in fact, it is difficult, if not impossible, under the facts of this case, to separate the two in terms of causation. Of course, a jury may very well conclude that both drivers were the proximate cause of the harm. (Citations omitted).

Here, the very essence of the claim of negligence against Mr. Nelson was the fact that he participated in a car chase which ultimately resulted in the other vehicle careening off the roadway causing injury to the plaintiff. Given the essence of the claimed negligence against Mr. Nelson, under the principles espoused in the recent *Albertson* case, the giving of an intervening-superseding cause instruction was reversible error as a matter of law.

As explained in *Albertson*, at 297, only intervening acts which are not reasonably foreseeable are deemed to be superseding causes. *Id.* In

determining whether or not something is a superseding cause the courts look to the Restatement (2d) of Torts § 449 (1965) which, provides "[I]f the likelihood that a third person may act in a particular manner is ... one of the hazards which makes the defendant negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the defendant from being liable for the injury caused by the defendant's negligence." *Id.* In determining whether an intervening force is a superseding cause, several factors set forth Restatement (2d) of Torts §442 (1965) should be examined, including (1) whether the intervening force brings about a harm different in kind from the harm which would have otherwise resulted from the defendant's negligence; (2) whether the intervening act was extraordinary or its consequences were extraordinary; and (3) whether the intervening act operated independently of the situation created by the defendant's negligence. *Id.*

In this case, the very reason why Defendant Nelson's actions breached a duty owed to plaintiff, was the fact that the other participant in the chase could get into an accident. The fact that Mr. Stanton's reaction to Mr. Nelson's conduct was to drive negligently in his own right, is "one of the hazards" which made Defendant Nelson's conduct negligent in the first instance. Further, the fact that Mr. Stanton, undisputedly was still reacting to what he perceived to be Mr. Nelson's conduct, establishes that

the accident was not something which operated independently of the situation created by Nelson's own negligence. If he had not chased Mr. Stanton, the accident, more probable than not, would not have happened.

Thus, under the principles espoused in *Albertson*, it was clearly reversible error to give an intervening-superseding cause instruction relating to the December 22, 2009 accident. The fact that Mr. Nelson was a participant in a car chase is the very reason why his actions were unreasonable, thus negligent. One cannot have a car chase without at least two cars, and a car chase by its very nature has the inherent risk that the other participant will cause injury to a third party, such as plaintiff in this case. What happened was clearly "one of the hazards" which in and of itself made Mr. Nelson's conduct negligent. Thus, as a matter of law it could not have been an intervening-superseding cause. See also, *Travis v. Bohannon*, 128 Wn.App. 231, 115 P. 3d 342 (2005). (If the defendant's original negligence continues and contributes to the injury, the intervening negligence of another is an additional cause. It is not a superseding cause and does not relieve the defendant of liability).

The *Albertson* case is also instructive with respect to the impropriety of giving Court's Instruction No. 23. As shown in *Albertson*, at Page 298, if it cannot be shown that the alleged superseding act was "so highly extraordinary or improbable that no reasonable person could be

expected to anticipate it,” then as a matter of law it is an error to instruct a jury on the issue of intervening-superseding causes. As expanded upon in *Cramer v. Department of Highways*, 73 Wn.App. 516, 521, 870 P. 2d 999 (1994) the standards for giving an intervening-superseding cause instruction are exceedingly high and they rarely should be given:

"Whether an act may be considered a superseding cause sufficient to relieve a defendant of liability depends on whether the intervening act can reasonably be foreseen by the defendant; only intervening acts which are not reasonably foreseeable are deemed superseding causes. A superseding cause exists if the acts of the plaintiff or a third party are "so highly extraordinary or unexpected that [they] can be said to fall without the realm of reasonably foreseeable as a matter of law. If the acts ... are within the ambit of the hazards covered by the duty imposed upon the defendant, they are foreseeable and do not supersede the defendant's negligence" (Citations omitted).

In that regard, the fact that someone is involved in an automobile accident may suffer from another event which either contributes to or aggravates the injuries suffered in an earlier accident, is certainly not something "so highly extraordinary or improbable" that no reasonable person can be expected to anticipate it. For intervening-superseding cause purposes, "reasonable foreseeability" does not require that the precise manner or sequence of events in which a plaintiff is harmed be foreseeable. See *Albertson*, 191 Wn.App. at 297. Thus, it does not matter whether a subsequent aggravation or compounding of the injuries is a

byproduct of a slip and fall, sports injury, bending, twisting or lifting, or another automobile accident. The fact that someone can have an event aggravating an accident related injury should be viewed as within the scope of the risk created by the original negligent conduct. See *Linguist v. Dengel*, 92 Wn. 2d 257, 595 P. 2d 934 (1979).

In the multiple accident scenario, involving alleged "indivisible injuries," the whole point is the consequences of the original negligence continues to contribute to the injury and the intervening accident and/or event is nothing more than an additional cause which may enhance that injury which already exists. See generally, *Travis v. Bohannon*, 128 Wn.App. at 242. See, also, *Cox v. Spangler*, 141 Wn. 2d 431, 5 P. 3d 1265 (2000); *Phennah v. Whalen*, 28 Wn.App. 19, 621 P. 2 1304 (1980).

In that regard, plaintiff has not been able to find a published opinion involving alleged "indivisible injuries" wherein our appellate courts have endorsed that a subsequent accident can be an intervening-superseding event. However, such a notion was squarely rejected in the unpublished opinion in *Lennox v. Lourdes Health Network*, 216 Wn.App. Lexis 1613 (2016) (unpublished) (because the case involved "... multiple defendants and an indivisible injury, and, therefore, a superseding cause

analysis is inapplicable", citing to, e.g., *Travis v. Bohannon*, 128 Wn.App. at 242).<sup>12</sup>

It was a fundamental error for the court to give Instruction No. 23 in this case where "indivisible" injury was alleged. Giving this instruction, standing alone, as with Instruction No. 24, was reversible error.

**F. The Trial Court Should Have Granted Plaintiff's Post Trial Motion for Judgment As A Matter Of Law Regarding Defendant Nelson's Liability and/or At A Minimum A New Trial With Regard To Plaintiff's Claim Against Defendant Nelson.**

Under the terms of CR 59(a)(7) a new trial can be granted if the verdict is not supported by "substantial evidence". As explained in *Sommers v. DSHS*, 104 Wn.App. 160, 172, 15 P.3d 664 (2001), when assessing whether or not a verdict is supported by "substantial evidence," the court looks to whether or not any evidence or reasonable inference is therefrom justifying the verdict. It is considered an abuse of discretion to deny a motion for a new trial when a verdict is contrary to the evidence. *Id.* There must be "substantial evidence" and not "a mere scintilla" of evidence to support a verdict that is, i.e., evidence of a character, which would convince an unprejudiced, thinking mind of the truth of facts which

---

<sup>12</sup> This unpublished opinion is being cited pursuant to GR 14.1(a) as nonbinding persuasive authority.

the evidence is directed. Otherwise a verdict cannot be based on conjecture or speculation. *Id.*

A motion for judgment as a matter of law must be granted if there is insufficient evidence to support the verdict. *Berndt v. Hammer*, 58 Wn. 2d 408, 363 P. 2d 293 (1961).

The law of negligence involves an objective standard. See *Ramey v. Knorr*, 130 Wn. App. 672, 676-77, 124 P.3d 314 (2005). It applies the standard of a reasonable person under like circumstances. *Id.* When an occurrence should have been reasonably foreseeable by a person of ordinary intelligence and prudence, a driver of a motor vehicle can be found negligent as a matter of law. *Ramey*, 130 Wn. App. at 679.

Under the facts of this case, even viewing the evidence in a light favorable to defendant Nelson, based on his own admissions at time of trial, he knew or should have known that his driving behavior would impact the driving of Mr. Stanton in a negative manner. By his own admission, Mr. Nelson interjected himself into what was already a highspeed chase involving Mr. Stanton and Mr. Sluka which was occurring on the otherwise bucolic streets of Gig Harbor. Despite such knowledge, Mr. Nelson decided to speed up to 90 miles per hour, overtaking the Sluka vehicle, placing himself in the lead position directly behind Mr. Stanton who was already driving at a high speed--trying to get

away. Objectively, it would have appeared to anyone that Nelson was participating in the chase when he aggressively approached and at a high rate of speed, the rear of the Stanton vehicle and by his driving through a red light.

Under such circumstances, Mr. Nelson knew, or should have known that by interjecting himself into a chase, his action would only serve to encourage Mr. Stanton to continue to drive at excessive rates of speeds, trying to get away from what he reasonably perceived to be a hostile pursuer.

It was undisputed at time of trial that in his continuing effort to "get away" Mr. Stanton was involved in a single-car accident which occurred likely less than a mile and less than a minute (given the speeds involved) from the point where Mr. Nelson contends he discontinued the pursuit.

It was error for the trial court not to grant plaintiff's motion for judgment at a matter of law, given the admitted nonsensically negligent conduct perpetrated by Mr. Nelson, which, as a matter of undisputed fact caused and contributed to the single-car collision. This is particularly so given the fact that the whole reason why Mr. Nelson's actions would be considered negligent in the first instance is its likely effect on the other driver who was participating in the car chase – Mr. Stanton.

**G. The Trial Court Committed Reversible Error by Failing To Give Plaintiff A Loss Of Earning Capacity Instruction.**

Finally, on the issue of instructional error it is quite clear that the Court erred by failing to include "loss of earning capacity" as an element of damages available to the plaintiff within Court's Instruction No. 27, its damage instruction.

Plaintiff in this case, presented more than substantial evidence that Ms. Hart's ability to earn a living has been impacted by her accident-related debilitating headache condition. She testified, as well as her family members, that despite the fact that she spent a substantial amount of time and money training in a culinary school, she ultimately had to abandon work within the restaurant industry because of her headache condition. That evidence alone is more than adequate to support the giving of a loss of earning capacity instruction.

Loss of earning capacity is different than lost wages. In the case of *Murray v. Mossman*, 52 Wn.2d 885, 889, 329 P.2d 1089 (1958) the Supreme Court recognized that "loss of earning capacity" is much different than "lost wages."

What distinguishes lost wages from lost earning capacity was explored in *Bartlett v. Hantover* 9 Wn.App. 614, 513 P.2d 844 (1973) at pages 619-20:

Care should be taken to distinguish lost time, lost earnings and lost wages from the loss of a capacity to earn. In order to instruct on lost earning capacity, the evidence must show with reasonable certainty that the injured party has suffered an impairment in his ability to make a living. Confusion arises from premising the right to recover for lost or impaired earning capacity on a supposedly indispensable evidentiary foundation relating to the level of earnings achieved by the plaintiff before the physical injury was suffered. This is not a basis for recovery of lost earning capacity. Rather, the showing that must be made is that the injury suffered by the plaintiff is an injury that, in fact, has diminished the ability of the plaintiff to earn money. The requirement of the law leaves the fixing of the amount of loss to the discernment of the jury. (Citation omitted).

It takes very little to establish a "loss of earning capacity". In *Murray, supra*, a secretary was allowed to claim a loss of earning capacity when she suffered a loss of sensation in her hands affecting her ability to type and had other conditions such as headaches which slowed down her ability to perform work.

In this case, there is ample evidence that plaintiff suffered a "loss of earning capacity". As the Court can take note, even though she attended culinary school plaintiff no longer works in the restaurant/cooking industry because of her physical inability to perform such work without suffering from her accident-related conditions. CP 1467-1474. When her headaches are symptomatic, plaintiff's ability to play with her own infant/toddler was affected and at family events she often spends time laying down in dark rooms because of her migraines.

*Id.* RP 1784-1789, 1829. That alone was a sufficient foundation for a loss of earning capacity instruction.

Here, the plaintiff was denied an opportunity to have the jury award her compensation for an entire category of damages not otherwise covered by the court's damages instruction. Such a reversible error warrants the granting of a new trial.

**H. The Jury Verdict was Contradictory and Irreconcilably Inconsistent. It is Impossible to Determine What the Jury Meant by Its Verdict.**

The verdict form in this case was unduly complex, and remarkably strayed from the verdict form suggested for multiple-party cases within the WPI's. See, WPI 45.24. As noted above, the Court's revised verdict form, along with the instructions, were internally inconsistent as it related to what, if any, consideration should be given to the Britney Powell accident (which never should have been subject fault allocation within the verdict form in the first place.) The verdict form asked the jury to conduct two forms of allocation, one by time and accident, and one based on a percentage of responsibility. Predictably, particularly after the trial court's *sua sponte* (mid deliberations) revision of the verdict form, the result was incomprehensibly inconsistent.

When evaluating whether a jury verdict's inconsistency warrants the grant of a new trial, the court must review the verdict form and try to

reconcile its answers, if at all possible. See *Mears v. Bethel Sch. Dist.*, 182 Wn.App. 919, 927, 332 P.2d 1077 (2014). When the answers on the verdict form reveal clear contradictions and the court cannot determine how the jury resolved ultimate issues, a new trial is warranted. *Id.* If it is determined that a special verdict form contains answers which are irreconcilably inconsistent, and from which it is impossible to determine what the jury meant when rendering a verdict, a new trial is required. See, *Catlan v. DOL*, 101 Wn.2d 512, 515, 681 P.2d 233 (1984).

In reviewing the verdict form even without consideration of the improper allocation of fault to a non-negligent party, the verdict form "on its face" is impossible to understand. Question No. 10, in the revised verdict form allows for an award of future damages based on "some or all of the collisions" including the March 22, 2014 collision. In response to this question the jury awarded substantial damages from March 22, 2014 into the future. But based on the question it is impossible to know whether or not such damages relate solely to one or more of the accidents at issue.

Such incomprehensibility is further compounded by the jury's answer to question No. 11 which answered "no" as to whether or not the plaintiff suffered any "indivisible injuries" which is never fully defined anywhere within the court's instructions.

Yet, when erroneously entering the "several" judgments in this case, the court allocated responsibility **as if the injuries were indivisible**.

For example, defendant Stanton was found to be 70 percent responsible for fault allocation purposes under question No. 12. In response to such an allocation, the court entered judgment against defendant Stanton for 70 percent of the total damages suffered by the plaintiff, for a total judgment of \$306,540.00, which included 70 percent of the damages accrued after March 22, 2014. Thus, the trial court treated the damages awarded after March 22, 2014 as if they were "indivisible". See generally, *Cox v. Spangler*, 141 Wn.2d 431, 442-43, 5 P.3d 1265 (2000) (discussing elements in indivisibility).

Thus, not only did the verdict form contain an error of law – an allocation of fault to a non-negligent party – but also was so unduly complex and confusing that it resulted in an incomprehensible and inconsistent result. Given that there is truly no way of telling how the jury intended to resolve the issues in this case a new trial is warranted.

## V. CONCLUSION

This case, at many levels, warrants the granting of relief by the appellate court. At the barest of minimums, the appellate court should remand this matter with the direction to the trial court to enter a verdict

joint and severally against the defendant's the jury found liable in its full amount of the verdict, without a 20-percent "discount."

Such a remedy would be deficient and not served to cure the fact that the plaintiff was provided a constitutionally deficient trial due to juror bias and misconduct. She also had a trial which was infected by a significant and prejudicial instructional error. Such misconduct and errors warrant the grant of a full new trial, without consideration of the March 22, 2014 accident, on which the trial court found Ms. Powell not to be negligent as a matter of law – a determination that has not been subject to cross-appeal.

In such a new trial, the jury should be instructed, as a matter of law, that Mr. Nelson was negligent and that such negligence was a proximate cause of the December 22, 2009 accident. The evidence viewed in a light most favorable to Mr. Nelson, particular given his own admissions, established that he was negligent, and the undisputed testimony from the plaintiff and Mr. Stanton established the crucial element of proximate cause, i.e., that Mr. Nelson's negligence conduct "encouraged" Mr. Stanton to continue to drive negligently resulting in the above-discussed single-vehicle accident. Mr. Nelson's conduct "encouraged" Mr. Stanton's behavior, just as much as when someone points a gun at somebody else encourages them to "duck". The trial

court's failure to find as a matter of law Mr. Nelson's negligence was a proximate cause of the Stanton accident, only serves to encourage negligent behavior that could be characterized as ridiculous and lawless.

Dated this 8<sup>th</sup> day of April, 2019.



---

Paul A. Lindenmuth, WSBA No. 15817  
Of Attorney for Appellant/Plaintiff

## APPENDIX

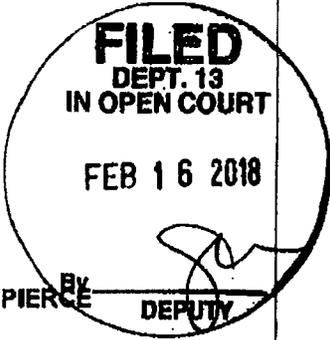
<b>No.</b>	<b>Description</b>	<b>Page No.</b>
1.	Jury questions during deliberations No. 2, No. 3, No. 4, No. 6, and No. 7	002 - 016
2.	Declaration of Kristen Coalman	017 - 023
3.	Declaration of Kenneth Wiebe	024 - 027
4.	Special Verdict Form (Revised)	028 - 032
5.	Instruction No. 23	033 - 034
6.	Instruction No. 24	035 - 036
7.	Instruction No. 27	037 - 039
8.	RCW 4.22.015	040 - 041
9.	Judgment on Jury Verdict Against Defendant's Brayden Stanton and Todd Evans	042 - 050
10.	Judgment Against Defendants Prather and Knauer on Jury Verdict	051 - 054
11.	RCW 4.22.070	055 - 056
12.	Article 1 Section 21 of Washinton State Consitution	057 - 058
13.	Court's Insturctions to the Jury	059 - 094

# APPENDIX NO. 1

0318

4844

5/1/2018



2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

REBEKAH L HART,  
Plaintiff(s)

Cause No: 12-2-14762-6

vs.

JURY QUESTION #2

EMILY PRATHER,  
Defendant(s)

*Jurors: If, after carefully reviewing the evidence and instructions you need to ask the court a procedural or legal question that you have been unable to answer, then write down your question on this form. Please print legibly. Do not state how the jury has voted.*

QUESTION: See attached

Presiding Juror/Date

RESPONSE: The meaning of "General Field of Danger" is a question for the jury to determine.

DATED this 15 day of Feb, 2018.

Kathryn J. Nelson  
JUDGE KATHRYN J. NELSON

Paul Alexander Lindenmuth  
Attorney for Plaintiff/Petitioner  
WSBA# 15817

Jeffrey D Coats  
Attorney for Defendant/Respondent  
WSBA# 32198

Jury Questions | 2/14/18

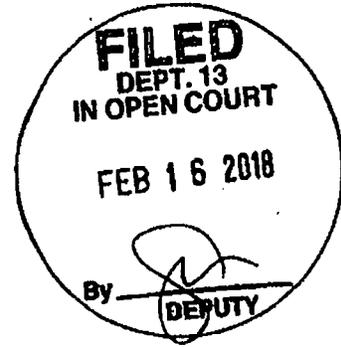
① What does "general field of danger" mean?  
"Instruction 24"

② X/Coak

0520



12-2-14762-6 50862904 JYNR 03-01-18



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

REBEKAH L HART

Plaintiff(s)

vs.

EMILY PRATHER, et al.

Defendant(s)

Cause No. 12-2-14762-6

QUESTION 3 FROM JURY DURING  
DELIBERATIONS

4946

2/1/2018

2/15/18

## Questions

①

Based on the information given to us by the court, we are having a difficult time reaching a majority of 10 on one of the questions. Do we need to answer all questions in the order presented? (per instruction 36)

Is there anything the court can provide us to help us move forward?

②

If defendant is not found negligent by the jury, do we need to assign damages?

For example Question #1 and #7 vs. #5 and #10

We need clarification

③

It doesn't appear we will come to a decision before end of Friday. Since we losing a juror on Monday, we will have to start over? What would the court suggest we do in regards to Friday deliberations?

*[Signature]*

0322

4844

3/1/2018

**ANSWER TO QUESTION 1:**

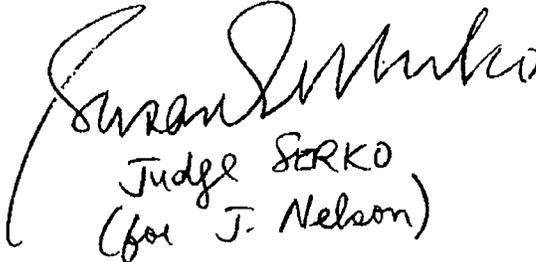
Please read and follow the Court's Instructions to the Jury. Please read and follow instructions in the Special Verdict Form.

**ANSWER TO QUESTION 2:**

Please read and follow the Court's Instructions to the Jury. Please read and follow instructions in the Special Verdict Form.

**ANSWER TO QUESTION 3:**

Please continue your deliberations.

  
Judge SERKO  
(for J. Nelson)

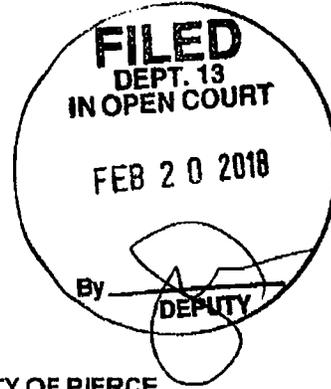
1780

4824

01/2018



12-2-14762-6 50862938 JYNR 03-01-18



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

REBEKAH L HART

Plaintiff(s)

vs.

EMILY PRATHER, et al.

Defendant(s)

Cause No. 12-2-14762-6

QUESTION 4 FROM JURY DURING DELIBERATIONS

Question

- ① Clarification of Question # 10  
and Instruction # 12  
(they mention 4 accidents)  
but Brittney Power is  
found not negligent.

~~OK~~ Carol

0569

4844

3/1/2018

**ANSWER:**

**Please review the Revised Special Verdict Form.**

0347



4844

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

3/1/2018

REBEKAH L HART

Plaintiff(s)

vs.

EMILY PRATHER, et al.

Defendant(s)

Cause No. 12-2-14762-6

QUESTION 6 FROM JURY DURING  
DELIBERATIONS

## Jury Questions

① If a person is found "not negligent" can they still be found responsible for damages? i.e. MVA #4

Kline

0349

4844

3/1/2018

ANSWER: Answer the questions on the Special Verdict Form (Revised) and follow all of the Court's Instructions to the Jury.

0550



12-2-14762-6 5086:991 JYNR 03-01-18



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

REBEKAH L HART

Plaintiff(s)

vs.

EMILY PRATHER, et al.

Defendant(s)

Cause No. 12-2-14762-6

QUESTION 7 FROM JURY DURING DELIBERATIONS

4844

3/1/2018

Questions

① If questioned # 1 is answered "yes" do the damages answered in question # 7 stand alone or are they a percentage of question # 12?

(collision of March 1)

J. C. Miller

0352

4844

5/1/2018

**ANSWER:** Answer the questions on the Special Verdict Form (Revised) and follow all of the Court's Instructions to the Jury.

## APPENDIX NO. 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE HONORABLE KATHRYN J. NELSON  
HEARING DATE: MARCH 9, 2018

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

REBEKAH L. HART, individually,

Plaintiff,

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; and BRITTANY POWELL, individually,

Defendants.

NO. 12-2-14762-6

DECLARATION OF KRISTEN  
COALMAN

DECLARATION OF KRISTEN COALMAN- 1

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

1  
2 I, Kristen Coalman, hereby declare under penalty of perjury under the laws of the State of  
3 Washington that the following is true and correct: Your declarant is over the age of 18,  
4 competent to testify herein, and makes this Declaration based upon personal knowledge.  
5

6 That I was the presiding juror in the above-referenced matter that was tried before the  
7 Court on January 8, 2018 through February 22, 2018 when the jury reached a verdict. During the  
8 course of the trial in this matter I was shocked at the amount of bias that was openly displayed by  
9 my fellow jurors. Even before any evidence was presented in the case, jurors who ended up on  
10 the jury were making comments that showed their clear bias. For example, some jurors  
11 commented that because the plaintiff had been involved in four accidents, that she must just be  
12 an "ambulance chaser." There was no question that these jurors had already made up their mind  
13 against the plaintiff before even hearing any evidence in the case.  
14

15 During the course of the trial, it became even worse. Although the judge repeatedly  
16 advised and instructed the jury not to talk about the case or the evidence, that rule was regularly  
17 violated. I witnessed jurors talking about and making comments about certain witnesses and the  
18 credibility of their testimony or the content of their testimony. They made comments as to  
19 whether or not the testimony of certain witnesses could or could not be believed. Again, their  
20 biases were quite apparent, and they did not seem to care that they were violating the Court's  
21 orders not to talk about the case or the evidence during the course of the trial. When other jurors  
22 reminded those jurors that they were violating the Court's orders, they did not seem to care. I  
23 was one of the jurors that reminded those other jurors that they were not supposed to be talking  
24  
25

DECLARATION OF KRISTEN COALMAN- 2

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

1 about the case, the witnesses, or the evidence as the judge had instructed.

2           During the course of the case, it became so bad, that I Googled in an attempt to determine  
3 how I could speak to the judge's Judicial Assistant, Ginele. Another juror and I phoned one  
4 another attempting to figure out how to advise the Court confidentially about the improprieties  
5 that were occurring during the course of the trial. Unfortunately, I was unable to figure out how  
6 to do that through a Google search.  
7

8  
9           When jury deliberations began, I was appointed the Presiding Juror. I knew that if I was  
10 not appointed the Presiding Juror, that there were a number of jurors on the panel who would  
11 attempt to "railroad" the verdict consistent with their clearly stated biased opinions. Comments  
12 were made during the course of trial that they did or did not believe certain witnesses' testimony  
13 and in fact they called certain witnesses "liars". Comments were also made such as: "Can you  
14 believe she said that?" This type of comment regarding the evidence in violation of the Court's  
15 orders was rampant throughout the whole trial.  
16  
17

18           That during the course of the deliberations, it became very apparent that there were a  
19 good number of jurors who simply liked Emily Prather, and did not want to rule against her. In  
20 the end, it became a compromise that those jurors finally agreed to find Emily Prather negligent,  
21 but in order to do so they would not agree to assessing anything other than nominal damages  
22 against her. The evidence was not evaluated in my estimation, and rather, was simply an  
23 arbitrary number that was arrived at without looking at the evidence of injury. I tried very hard  
24 to get the jurors to look at the documentary evidence that was presented during the course of  
25 trial. Only because I insisted were the exhibits reviewed at all. Nevertheless, it appeared to me

1 that there were many jurors who simply refused to go along with the evidence. They simply did  
2 not want to find against Emily Prather at all, because they thought that she was attractive or  
3 "pretty."

4  
5 During the course of deliberations, I and other jurors were criticized on a regular basis.  
6 Any juror who was against the other jurors in favor of the defense, was regularly referred to as a  
7 "bleeding heart". There were demeaning comments made about me particularly, as a minority of  
8 women on the jury panel. I found this to be completely improper, in an effort to influence me  
9 and make me feel uncomfortable. It was very clear that the male jurors who did not agree with  
10 my position concerning the case, wanted to replace me. It was very clear that a number of the  
11 male jurors did not like my opinion simply because I was a woman. In addition, other male  
12 jurors made vulgar comments about me and the bodies and the other female attorneys.  
13  
14

15 One of the other male jurors spoke to me about how the other male jurors were voting  
16 and this is how I learned that the alternate juror on standby they thought would be more  
17 favorable to the defense. It appeared that these jurors wanted to have Juror No. 2 replaced by the  
18 alternate juror, so that they would then have another advocate for their position.  
19  
20

21 In addition, during the course of trial, it became apparent that notwithstanding the Court's  
22 orders, a good number of jurors - approximately four to five as I recall - had nevertheless got on  
23 the Internet and were reviewing Rebecca Hart's Facebook page. There was discussion about her  
24 Facebook page and Internet content during the course of trial. This, I know was directly against  
25 the Court's orders not to do any independent research, outside of the evidence in the case.

DECLARATION OF KRISTEN COALMAN- 4

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

1 In addition, with regard to the evidence concerning Eric Nelson's pursuit of Braden  
2 Stanton, one of the jurors resided along the route of the chase. He provided information  
3 concerning his residence that was on or near the pursuit route, and his opinion in that regard  
4 concerning time and distances that would have elapsed based upon his knowledge of residing in  
5 that area. This of course was not the evidence that was presented during the course of trial, but  
6 instead, his personal knowledge as he resided on the pursuit route. This also was outside of the  
7 evidence in the case, and against the Court's orders and instructions.  
8

9  
10 During the course of trial deliberations, a question was posed regarding the Jury  
11 Instruction No. 24 regarding the "general field of danger". As the Presiding Juror, I posed that  
12 question, as it went directly to the evidence regarding Mr. Nelson's chase of Braden Stanton.  
13 The Court did not answer that question, and the instruction was very confusing to the jury. The  
14 confusion caused by that instruction, and the very similar instruction right before it, No. 23, I  
15 believe resulted in continuing confusion concerning whether Mr. Nelson's negligence was a  
16 proximate cause of the second collision of December 22, 2009.  
17

18  
19 Also, it was apparent during the course of deliberations that the majority of the jurors did  
20 not want to look at the evidence, but rather avoid passing blame or assessing negligence, letting  
21 Ms. Prather "off the hook" because she was pretty and sweet looking. Those jurors only  
22 reluctantly would look at the evidence against Ms. Prather, even when I urged them to do so.  
23

24  
25 There were some jurors that did not want to assess any damages against Ms. Prather at all, even  
though she was found to be negligent. It appeared that they wanted to find any doubt in the  
evidence against her. The only way that those jurors agreed ultimately to find Ms. Prather

1 negligent was to require an improper compromise not based upon the evidence, but rather, to  
2 insist that little or no damages were assessed against her. I knew that was wrong for those jurors  
3 to make a determination of liability or negligence contingent upon a finding of little or no  
4 damages. This was not consistent with the evidence at trial.  
5

6 That also in furtherance of the bias that was apparent during the course of trial, some of  
7 the jurors expressed quite clearly that they had prejudice against the plaintiff, Rebecca Hart and  
8 her mother, Kristy Hart. They used such terms as "ambulance chasers" in referring to Mrs. Hart  
9 and Rebecca. Again, I knew that these jurors were not supposed to be talking about the  
10 evidence, nor assessing the credibility of the witnesses. They did so notwithstanding continued  
11 cautioning by me and others that they were not supposed to do so as Judge Nelson repeatedly  
12 instructed. Several jurors had to remind those jurors not to talk about the evidence as the judge  
13 instructed, but they did so anyway. This again, was clearly in violation of the Court's orders.  
14 Those same jurors made comments such as "Who has four accidents?" They suggested that  
15 Mrs. Kristy Hart had set up the claim of Rebecca in order to make a lawsuit. Many times there  
16 were comments about the testimony of witnesses during trial, and snide remarks were made by  
17 jurors. I would usually respond with a comment such as: "we have to keep an open mind",  
18 which was most often scoffed at. One juror made very clear comments regarding his belief as to  
19 the credibility of witnesses when he said things such as: "I hate liars" after witnesses had  
20 testified.  
21  
22  
23  
24  
25

Further, during the course of deliberations, there were certain jurors who made comments  
that revealed their clear biases. They made comments such as: "I don't believe in chiropractic or

DECLARATION OF KRISTEN COALMAN- 6

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

## APPENDIX NO. 3

April 17 2018 2:52 PM

The Honorable Kathryn J. Nelson  
KEVIN STOCK  
COUNTY CLERK  
NO: 12-2-14762-6

THE SUPERIOR COURT OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

REBEKAH L. HART, individually,

Plaintiff,

v.

EMILY PRATHER, ET AL.

Defendants.

NO: 12-2-14762-6

DECLARATION OF KENNETH WIEBE,  
JUROR

1, KEN WIEBE, hereby declare under penalty of perjury under the laws of the state of Washington that the following is true and correct. Your Declarant is over the age of 18 and makes this Declaration based upon personal knowledge.

That I was a juror in the above-captioned case that was tried before the court on January 8, 2018 through February 22, 2018 when the jury reached a verdict. I have had an opportunity to review the Declaration of Kristin Coalman, who was the Presiding Juror in the case. I made the same observations of Ms. Coalman concerning the clear bias that was exhibited by some of

DECLARATION OF KENNETH WIEBE, JUROR

Law Offices Of Ben F. Barcus  
& Associates, P.L.L.C.  
4303 Ruston Way  
Tacoma, Washington 98402  
(253) 752-4444 • FAX 752-1035

1 the other jurors, which clearly affected the case. I agree particularly, that there were some jurors  
2 who favored Defendant Emily Prather, such that they “held the liability or negligence finding  
3 hostage” for assessment of a lower damages amount against her.

4 In addition, I recall that there were certain jurors who simply would not follow the court’s  
5 instructions – that were given repeatedly – not to discuss the case during trial and to keep an  
6 open mind. We had to remind some jurors that it was against the court’s instructions to discuss  
7 the evidence. Even during open court proceedings, I could hear a juror behind me making  
8 comments about the evidence as it was presented. This was particularly disturbing to me.  
9 Comments were made as I recall, such as: “he doesn’t know what he is talking about . . . ,” etc.

10 In addition, I recall during deliberations that some of the jurors had looked up Rebekah  
11 Hart’s Facebook page on the internet, that I knew was also against the court’s instructions not  
12 to do any independent research. Also, I recall that one of the jurors lived on the route that  
13 Defendant Eric Nelson was chasing Brayden Stanton’s truck at high speed. That juror made  
14 comments based upon his living in the area concerning times and distances that would have  
15 supposedly elapsed during the chase. This also, was not evidence from trial, but from the juror’s  
16 outside of court information. This was particularly confusing for the jury as it related to the  
17 proximate cause finding for Defendant Nelson’s negligence. The instructions in that regard  
18 were also particularly confusing as it related to the “general field of danger,” and I recall the  
19 jury sent a question to the court in that regard that was not answered.  
20  
21

22 With regard to the damages awarded in favor of Ms. Hart, I can assure that court that the  
23 amounts awarded were meant to be fully paid to her, without any further discounting. As it was,  
24 some jurors insisted upon discounting the damages, in order to assess lesser damages against  
25 Emily Prather, because they favored her as noted by Ms. Coalman in her Declaration.

**DECLARATION OF KENNETH WIEBE, JUROR**

**Law Offices Of Ben F. Barcus  
& Associates, P.L.L.C.**  
4303 Ruston Way  
Tacoma, Washington 98402  
(253) 752-4444 • FAX 752-1035

1 I also recall that during deliberations of the jury, that witness Scott Gregor, who saw the  
2 first accident, was supposedly a "MySpace" friend of Rebekah Hart. Although I recall that the  
3 Judge advised the jury to disregard that testimony from Ms. Prather, it was nevertheless discussed  
4 during deliberations, in violation of the court's specific instruction in that regard.

5 During the course of trial, and even before the trial began, I also recall comments being  
6 made by a juror that as Ms. Hart had been involved in four car accidents, that she must be an  
7 "ambulance chaser." This showed his clear bias from the beginning that continued throughout the  
8 course of the trial, as well as during jury deliberations. Although the Judge continued to remind  
9 us to "keep an open mind" during the course of trial, this did not happen. Continued comments  
10 about the trial evidence were made by other jurors, in clear violation of the Court's repeated  
11 instructions.  
12

13 During deliberations, I recall that anyone who did not agree with jurors who favored the  
14 defense were called "bleeding hearts." There was clearly an improper attempt by these jurors to  
15 improperly influence and override the other jurors' beliefs who felt differently than those defense  
16 biased jurors'. I recall that it was also difficult, if not impossible, to get some of the biased jurors  
17 to consider the actual evidence presented during trial. They seemed to have already made up their  
18 minds and did not want to consider the actual evidence admitted during trial.

19 In summary, it is my opinion that Ms. Hart did not have a fair trial in this matter due to  
20 the clearly stated biases of some jurors. They did not follow the Judge's instructions about  
21 listening to all the evidence, and not make decisions before all the evidence was presented. They  
22 favored Ms. Prather to the extent that they were only willing to assess negligence against her, if  
23 assessed damages was very low, and not in conformance with the evidence presented. I am very  
24 disappointed in the way that the jury performed in this case, and it has left me with significant  
25

**DECLARATION OF KENNETH WIEBE, JUROR**

**Law Offices Of Ben F. Barcus  
& Associates, P.L.L.C.**  
4303 Ruston Way  
Tacoma, Washington 98402  
(253) 752-4444 • FAX 752-1035

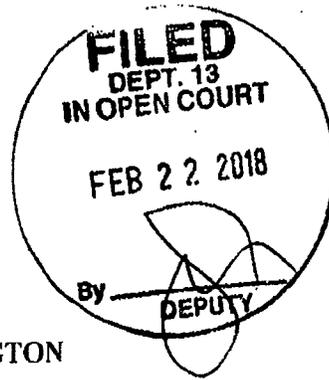
## APPENDIX NO. 4

0366



4844

3/1/2018



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

<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

0389  
4844  
3/1/2013

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")

0390  
4644  
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

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

## APPENDIX NO. 5

INSTRUCTION NO. 23

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 within the general field of danger which a defendant should reasonably have anticipated.

0379

4844

5/1/2018

## APPENDIX NO. 6

0379

4844

3/1/2018

INSTRUCTION NO. 24

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 within the general field of danger which defendant Eric Nelson should reasonably have anticipated.

## APPENDIX NO. 7

INSTRUCTION NO. 27

It is the duty of the court to instruct you as to measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by negligence of the defendant.

You should consider the following economic damages elements:

The reasonable value of necessary medical care, treatment, and services received to the present time.

The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.

In addition you should consider the following noneconomic damages elements:

The nature and extent of the injuries.

The disability, disfigurement, loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.

The pain, suffering, inconvenience, mental anguish and emotional distress experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

0306

4944

5/1/2018

## APPENDIX NO. 8

**Rev. Code Wash. (ARCW) § 4.22.015**

Statutes current through 2019 Regular Session c 3

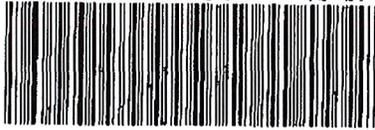
**4.22.015. "Fault" defined.**

---

"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.

## APPENDIX NO. 9



12-2-14762-6 50928076 JDV 03-13-18

0170  
4758  
3/13/2018

THE HONORABLE KATHRYN J. NELSON  
HEARING DATE: MARCH 9, 2018



THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

REBEKAH L. HART, individually,

Plaintiff,

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; and BRITTANY POWELL, individually,

Defendants.

NO. 12-2-14762-6

JUDGMENT ON JURY  
VERDICT

*Against Defendants  
Brayden Stanton and  
Todd Evans &*

JUDGMENT ON JURY VERDICT- 1

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

0171

4758

3/13/2018

I. JUDGMENT SUMMARY

- 1. Judgment to Creditor: Rebekah Hart
- 2. Judgment Creditor's Attorney: Ben F. Barcus and Paul A. Lindenmuth
- 3. Judgment Debtors: *KP* ~~Emily Prather; Parker J. Knauer; Steven Knauer and Pamela Knauer; Brayden Stanton; Todd Evans; and David Barker~~
- 4. Judgment Debtor's Attorney:
  - A. ~~Defendant Emily Prather -- Joseph R. Kopta and Jeffery D. Coats~~
  - B. ~~Defendants Parker, Steven and Pamela Knauer - Jeffery D. Coats~~
  - C. Brayden Stanton -- Susanna Schaub
  - D. Todd Evans -- Karen Marie Kay
  - E. ~~David Barker -- Alina Polyak.~~
- 5. Principal Judgment Amount: ~~\$433,000.00~~ *\$306,540.00* *KP*
- 6. Statutory Costs and Fees: *\$ Reserved*
- 7. Interest on Judgment: 6.50 %
- 8. Total Judgment: \$

THIS MATTER having come before the Court by way of a jury trial commencing January 8, 2018 and concluded by trial of a jury verdict on February 22, 2018. The jury awarded the plaintiff, Rebekah Hart, amounts totaling \$433,000.00 as set forth within the Special Verdict Form which is attached hereto as Exhibit No. 1, and ~~against the defendants herein jointly and~~ *against Debtors Stanton & Coats*

JUDGMENT ON JURY VERDICT- 2

The Law Offices of Ben F. Barcus & Associates, PLLC  
 4303 Ruston Way  
 Tacoma, WA 98402  
 253-752-4444  
 253-752-1035

0172  
4758  
3/13/2018

*kor*  
Based upon this Allocation Set forth herein (10/10)  
It is hereby ordered, adjudged and decreed, that  
Judgment is hereby entered against defendant Stanton  
severally), now therefore, it is hereby *and Enmons for \$308,540*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORDERED, ADJUDGED AND DECREED that statutory costs and fees are awarded to  
plaintiffs in the amount of \$ *Reserved*, and it is

ORDERED, ADJUDGED AND DECREED that the total judgment shall be and is  
hereby entered in favor of plaintiffs above-listed against the defendants *Stanton and Enmons*  
(jointly and severally) in  
*(Reserved)*  
the amount of \$ \_\_\_\_\_ and it is

ORDERED, ADJUDGED AND DECREED the judgment entered herein shall bear  
interest from today's date until judgment is satisfied in full at the highest statutory rate allowable  
under law which on March 9, 2018 is 6.50 % (RCW 4.56.115); and it is

~~ORDERED, ADJUDGED AND DECREED that judgment in the case shall be joint and  
several pursuant to RCW 4.22.070(1)(b).~~

DONE IN OPEN COURT THIS 9<sup>th</sup> day of March, 2018.

*Kathryn J. Nelson*  
Honorable Katherine Nelson  
Kathryn J. Nelson

**FILED**  
DEPT. 13  
IN OPEN COURT  
MAR 09 2018  
By *[Signature]*  
DEPUTY

PRESENTED BY:

The Law Offices of Ben F. Barcus & Associates, PLLC

*Paul Lindenmuth*  
Paul Lindenmuth, WSBA #15817  
Of Attorneys for the Plaintiff

*Suzanna Shaub*, WSBA #41018  
Suzanna Shaub  
Counsel for Defendant Stanton

//  
//  
//

JUDGMENT ON JURY VERDICT- 3

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

0173  
4758  
3/13/2018

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPROVED AS TO FORM:

Kopta & MacPherson

Joseph R. Kopta, WSBA #17682  
Of Attorneys for Defendants Emily Prather

APPROVED AS TO FORM:

Hollenbeck, Lancaster, Miller & Andres

Jeffery D. Coats, WSBA #32198  
Of Attorneys for Defendants, Parker and Steven and Pamila Knauer

APPROVED AS TO FORM:

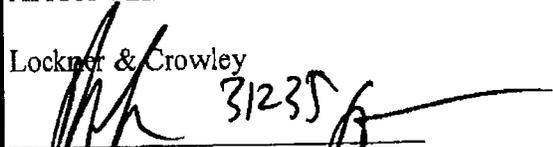
Reed McClure



Suzanna Shaub, WSBA #41018  
Of Attorneys for Defendant Brayden Stanton

APPROVED AS TO FORM:

Lockner & Crowley



Karen M. Kay, WSBA #30765  
Of Attorneys for Defendant Todd Evans

APPROVED AS TO FORM:

Moore & Davis

Alina Polyak, WSBA #45182  
Of Attorneys for Defendant Barker

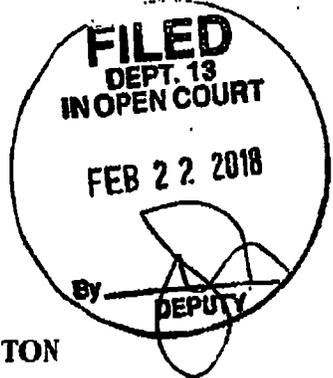
JUDGMENT ON JURY VERDICT- 4

The Law Offices of Ben F. Barcus  
& Associates, PLLC  
4303 Ruston Way  
Tacoma, WA 98402  
253-752-4444  
253-752-1035

0174  
0308

4758  
4544

3/13/2018  
3/1/2018



**SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY**

<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**

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")

5970  
0175  
4784  
313/2018

05910  
01210  
47897  
10262/31/3  
313/208

**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

1530  
0110

4784  
8524

81021/51/8  
3/13/2018

**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

## APPENDIX NO. 10

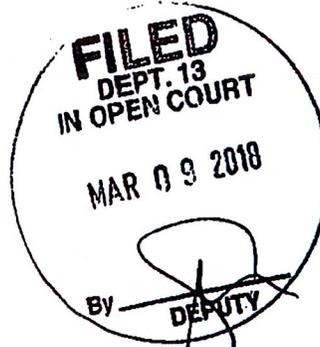
016

4758

0102/21



12-2-14762-6 50928072 JDV 03-13-18



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

REBEKAH L. HART, individually, )

Plaintiff, )

vs. )

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; )  
BRAYDON 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, )

Defendants. )

NO. 12-2-14762-6

JUDGMENT AGAINST DEFENDANTS  
PRATHER AND KNAUER ON JURY  
VERDICT

JUDGMENT SUMMARY

1. Judgment Creditor

Rebekah Hart

JUDGMENT AGAINST DEFENDANTS PRATHER  
AND KNAUER ON JURY VERDICT - 1

KOPTA & MACPHERSON  
5801 Soundview Drive, Suite 258  
Gig Harbor, WA 98335  
Telephone: (253) 858-0785  
Fax: (253) 851-6225

016

4758

13/2018

2.	Judgment Debtors:	Emily Prather, Parker J. Knauer, Steven and Pamila Knauer
3.	Jury Verdict	\$ 33,640 <del>\$17,320.00</del>
4.	Interest to date of judgment	_____
5.	Statutory Attorney's Fees and Costs to plaintiff	<del>200.00</del>
6.	Less Statutory Attorney's Fees and Costs to Defendant	\$ 481.00
7.	Rate of Interest on Judgment	6.5%
8.	Attorney for Judgment Creditor	Ben Barcus
	<b>TOTAL JUDGMENT</b>	\$ <u>33,159.00</u>

**ORDER**

THIS MATTER, having come before the undersigned Judge of the above-entitled Court, the plaintiff appearing through her attorney, Benjamin Barcus, and defendants appearing through their attorney, Joseph R. Kopta, and the jury herein having rendered its verdict on February 22, 2018, and the Court finds that the verdict in the amount of \$17,320.00 in favor of plaintiff and against Defendants Prather and Knauer shall be several only, and defendants being entitled to an award of taxable statutory attorney's fees and costs in the amount of \$ 481.00 as the prevailing party, and the Court having reviewed and considered the records and files herein and being fully informed, now, therefore, it is:

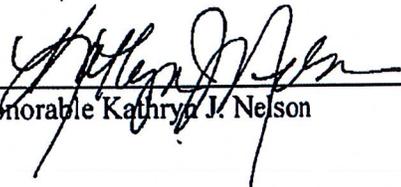
ORDERED: That Rebekah Hart shall have, and is hereby granted, judgment severally against Emily Prather, Parker J. Knauer, Steven and Pamila Knauer in the amount of \$ 33,159.00, such judgment to bear interest at the maximum rate allowed by law, until paid in full; and it is further

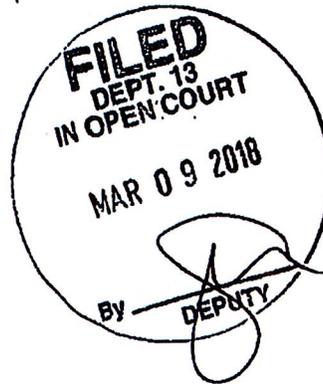
JUDGMENT SUMMARY AND ORDER GRANTING  
 JUDGMENT ON JURY VERDICT - 2

KOPTA & MACPHERSON  
 5801 Soundview Drive, Suite 258  
 Gig Harbor, WA 98335  
 Telephone: (253) 858-0785  
 Fax: (253) 851-6225

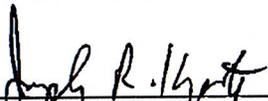
1 ORDERED: That the defendants shall pay the judgment amount into the registry of  
2 the Court. The plaintiff's attorney shall file a Satisfaction of Judgment upon receipt of the  
3 judgment funds from the registry of the Court.

4 DONE IN OPEN COURT this 9 day of March, 2018.

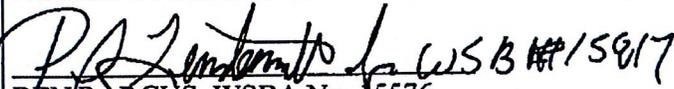
5  
6   
7 Honorable Kathryn J. Nelson

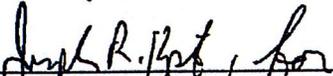


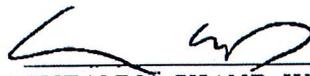
8  
9  
10 PRESENTED BY:

11   
12 JOSEPH R. KOPTA, WSBA No. 17682  
13 Attorney for Defendant

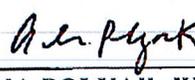
14  
15 COPY RECEIVED; APPROVED AS TO FORM;  
16 NOTICE OF PRESENTATION WAIVED:

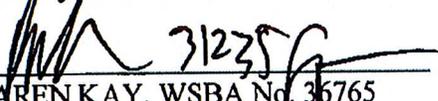
17   
18 BEN BARCUS, WSBA No. 15576  
19 Attorney for Plaintiff

20   
21 JEFFREY COATS, WSBA No. 32198  
22 Attorney for Defendants Knauer

23   
24 SUZANNA SHAUB, WSBA No. 41018  
25 Attorney for Defendant Stanton

26   
27 YVONNE BENSON, WSBA No. 35322  
Attorney for Defendants Nelson

  
ALINA POLYAK, WSBA No. 45182  
Attorney for Defendant Barker

  
KAREN KAY, WSBA No. 36765  
Attorney for Defendant Evans

JUDGMENT SUMMARY AND ORDER GRANTING  
JUDGMENT ON JURY VERDICT - 3

KOPTA & MACPHERSON  
5801 Soundview Drive, Suite 258  
Gig Harbor, WA 98335  
Telephone: (253) 858-0785  
Fax: (253) 851-6225

## APPENDIX NO. 11

**Rev. Code Wash. (ARCW) § 4.22.070**

Statutes current through 2019 Regular Session c 3

**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 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.

## APPENDIX NO. 12

**Wash. Const. Art. I, § 21**

Statutes current through 2016 1st Special Session

***Annotated Revised Code of Washington > Constitution of the State of Washington > Article I  
Declaration of Rights***

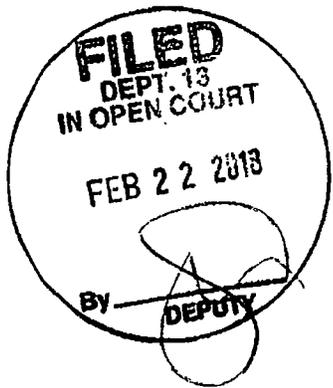
**§ 21 Trial by jury.**

---

The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

## APPENDIX NO. 13

0353  
4844  
3/1/2018



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

<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>
---	-------------------------

COURT'S INSTRUCTIONS TO THE JURY

Dated: February 13, 2018

  
HONORABLE KATHRYN J. NELSON

**ORIGINAL**

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of the witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any

other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

As to the comments of the lawyers during this trial, they are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the

0500  
4784  
8102/1/5

course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, bias, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

INSTRUCTION NO. 2

1. Plaintiff claims that on March 1, 2009, that defendant Emily Prather was negligent and that such negligence was a proximate cause of injury and/or damages to the plaintiff.

Defendant Emily Prather denies she was negligent, and the nature and extent of plaintiff's claimed injury.

2. Plaintiff claims that on December 22, 2009, that defendant Brayden Stanton and Eric Nelson were negligent and that such negligence either individually or concurrently proximately caused injury and/or damage to her.

Defendants Brayden Stanton and Eric Nelson deny they were negligent and deny the nature and extent of plaintiff's claimed injury.

3. Plaintiff claims that on April 7, 2013, defendant David Barker was negligent. Defendant Barker concedes that he was negligent, but denies the nature and extent of plaintiff's claimed injury and/or damages.

4. It has been determined that defendant Brittany Powell was not negligent, however other defendants claim the accident of March 22, 2014, was a cause of some of plaintiff's injuries. Plaintiff denies that claim.

5. Plaintiff also claims that her injuries and/or damages are "indivisible." The defendants deny this claim.

4844 0102/1/8

INSTRUCTION NO. 3

The foregoing is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed unless admitted by the opposing party; and you are to consider only those matters that are admitted or are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

0358

4844

3/1/2018

INSTRUCTION NO. 4

You should decide the case of each defendant separately as if it were a separate lawsuit. The instructions apply to each defendant unless a specific instruction states that it applies only to a separate defendant.

0359

4844

3/1/2018

INSTRUCTION NO. 5

You do not need to decide whether defendant Barker was negligent. Defendant Barker's negligence has already been established. You are to decide what injuries and/or damages, if any, to plaintiff were proximately caused by defendant Barker's negligence.

Additionally, it has already been determined that plaintiff, was "fault-free" with regard to the accidents of December 22, 2009, April 7, 2013, and March 22, 2014.

0360

4944

3/1/2018

0361

4844

3/1/2018

INSTRUCTION NO. 6

The fact that a witness has talked with a party, lawyer, or party's representative does not, of itself, reflect adversely on the testimony of the witness. A party, lawyer or representative of a party has a right to interview a witness to learn what testimony the witness will give.

INSTRUCTION NO. 7

A person who provides a motor vehicle for the use of his or her family member is responsible for the acts of that individual in the operation of that vehicle, as follows:

It is already decided that on March 1, 2009, Emily Prather was acting as an agent for Parker, Pamila and Steven Knauer who provided her permission to use the Dodge Durango SUV involved in the collision of March 1, 2009 with a vehicle being driven by plaintiff.

If you find that Emily Prather was negligent and such negligence also was a proximate cause of plaintiff's injuries and/or damages, Parker Knauer and his parents, Steven and Pamila Knauer are also liable for plaintiff's injuries and/or damages.

Additionally, it has already been determined that on December 22, 2009, the Nissan Titan pick-up truck being driven by Brayden Stanton was a family car. If you find that Brayden Stanton was negligent and such negligence also was a proximate cause of plaintiff's injuries and/or damages, Brayden Stanton and his step-father Todd Evans are also liable for the injuries and/or damages suffered by plaintiff, which were proximately caused by Brayden Stanton's negligence.

3/1/2018 4:44 0362

INSTRUCTION NO. 4

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true.

0363

4844

5/1/2018

INSTRUCTION NO. 9

The plaintiff has the burden of proving each of the following propositions:

First, that defendants Prather/Knauer acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting or failing to act, defendants Prather/Knauer were negligent; and/or that defendants Stanton/Evans acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting or failing to act, defendants Stanton/Evans were negligent; and/or that defendant Nelson acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting or failing to act, defendant Nelson was negligent;

Second, that the plaintiff was injured;

Third, that the negligence of any particular defendant was a proximate cause of the injury to the plaintiff.

0364

4844

9/1/2018

INSTRUCTION NO. 10

The term "proximate cause" means a cause which in a direct sequence unbroken by any superseding cause, produces the injury complained of and without which such injury would not have happened.

There may be more than one proximate cause of an injury or event.

0545

4844

3/1/2015

INSTRUCTION NO. 11

There may be more than one proximate cause of the same injury or event. If you find that a defendant was negligent and that such negligence was a proximate cause of injury or damage to the plaintiff, it is not a defense that some other cause may also have been a proximate cause.

0366

4844

3/1/2018

INSTRUCTION NO. 12

If you find that plaintiff's injuries were proximately caused by a combination of the four collisions at issue in this case on March 1, 2009, December 22, 2009, April 7, 2013 and March 22, 2014, the burden of proving how damages should be divided or allocated, if at all, is upon those defendants found to be negligent.

0367

4844

3/1/2018

INSTRUCTION NO. 13

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

0359

4844

3/1/2019

INSTRUCTION NO. 14

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

0369  
4844  
3/1/2018

INSTRUCTION NO. 15

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

0260 4894 9102/1/8

INSTRUCTION NO. 16

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

0371

4844

3/1/2018

INSTRUCTION NO. 17

Every person using a public street or highway has the right to assume that other persons thereon will use ordinary care and will obey the rules of the road and has a right to proceed on such assumption until he or she knows, or in the exercise of ordinary care should know, to the contrary.

0 6 7 6

4 8 4 4

3 / 1 / 2 0 1 6

INSTRUCTION NO. 18

With respect to the March 1, 2009 collision, a statute provides as follows:

Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word or legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

- a. Vehicle operators facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicle operators turning right or left shall stop to allow other vehicles lawfully within the intersection control area to complete their movements.
- b. Vehicle operators facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection control area only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Vehicle operators shall stop to allow other vehicles lawfully within the intersection control area to complete their movements.

0373  
4844  
3/1/2018

INSTRUCTION NO. 19

The violation, if any, of a Statute is not necessarily negligence, but may be considered by you as evidence in determining negligence.

0374

4844

5/1/2018

INSTRUCTION NO. 10

Every person has a duty to see what would be seen by a person exercising ordinary care.

0375

4844

3/1/2018

INSTRUCTION NO. 21

If your verdict is for the plaintiff, and if you find that:

1. Before this occurrence, the plaintiff had a bodily condition that was not causing pain or disability; and
2. Because of the accidents of December 22, 2009, April 7, 2013 or March 22, 2014, the pre-existing condition was lighted up or made active, then you should consider the lighting up and any other injuries that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstance by a person without that condition.

0376  
4944  
3/1/2018

INSTRUCTION NO. 22

If you find that:

1. Before the accidents of December 22, 2009, April 7, 2013 or March 22, 2014 the plaintiff had a pre-existing bodily condition that was causing pain or disability, and

2. Because of one or more of the above three accidents, the condition or the pain or the disability was aggravated, then you should consider the degree to which the condition or the pain or disability was aggravated by this occurrence.

However, you should not consider any condition or disability that may have existed prior to any of these three accidents that was not caused or contributed to by any one or more of these three accidents.

0377  
4844  
5/1/2018

0379  
4844  
3/1/2018

INSTRUCTION NO. 23

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 within the general field of danger which a defendant should reasonably have anticipated.

0379  
4344  
3/1/2018

INSTRUCTION NO. 24

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 within the general field of danger which defendant Eric Nelson should reasonably have anticipated.

INSTRUCTION NO. 25

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 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.

0350

4644

3/1/2018

INSTRUCTION NO. 26

I have allowed exhibits to be used for illustrative purposes only. This means that their status is different from that of other exhibits in this case. The exhibit is not itself evidence. Rather, it is one party's illustration, offered to assist you in understanding and evaluating the evidence in the case. Keep in mind that actual evidence is the testimony of witnesses and the exhibits that are admitted into evidence.

Because it is not itself evidence, these exhibits will not go with you to the jury room when you deliberate. The lawyers and witnesses may use these exhibits now and later on during closing arguments. You may take notes from these exhibits if you wish, but you should remember that your decisions in the case must be based upon the evidence.

INSTRUCTION NO. 27

It is the duty of the court to instruct you as to measure of damages. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money that will reasonably and fairly compensate the plaintiff for such damages as you find were proximately caused by negligence of the defendant.

You should consider the following economic damages elements:

The reasonable value of necessary medical care, treatment, and services received to the present time.

The reasonable value of necessary medical care, treatment, and services with reasonable probability to be required in the future.

In addition you should consider the following noneconomic damages elements:

The nature and extent of the injuries.

The disability, disfigurement, loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.

The pain, suffering, inconvenience, mental anguish and emotional distress experienced and with reasonable probability to be experienced in the future.

The burden of proving damages rests upon the plaintiff. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

0589

4844

3/1/2018

INSTRUCTION NO. 28

According to mortality table, the average expectancy of life of a female aged twenty-six (26) years is 81 years. This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question.

0384

4844

3/1/2018

INSTRUCTION NO. 29

Whether or not a party has insurance, or any other source of recovery available, has no bearing on any issue that you must decide. You must not speculate about whether a party has insurance or any other coverage or sources of available funds. You are not to make or decline to make any award, or increase or decrease any award, because you believe that a party may have medical insurance, liability insurance, workers' compensation, or some other form of compensation available. Even if there is insurance or other funding available to a party, the question of who pays or who reimburses whom would be decided in a different proceeding. Therefore, in your deliberations, do not discuss any matters such as insurance coverage or other possible sources of funding for any party. You are to consider only those questions that are given to you to decide in this case.

0385  
4844  
3/1/2018

INSTRUCTION NO. 30

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given the exhibits admitted in evidence and these instructions. You will also be given a special verdict form that consists of several questions for you to answer. You must answer the questions in the order in which they are written, and according to the directions on the form. It is important that you read all the questions before you begin answering, and that you follow the directions exactly. Your answer to some questions will determine whether you are to answer all, some or none of the remaining questions.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

In order to answer any question on the special verdict form, ten jurors must agree upon the answer. It is not necessary that the jurors who agree on the answer be the same jurors who agreed on the answer to any other question, so long as ten jurors agree to each answer.

When you have finished answering the questions according to the directions on the special verdict form, the presiding juror will sign the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with the verdict. The presiding juror will then tell the judicial assistant that you have reached a verdict. The judicial assistant will bring you back into court where your verdict will be announced.

## CERTIFICATE OF SERVICE

I certify that on the 8<sup>th</sup> day of April, 2019, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

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)

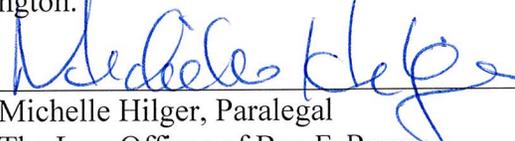
Coreen R. Wilson  
Wieck Wilson, PLLC  
400 112<sup>th</sup> Ave. N.E., Ste  
340  
Bellevue, WA 98004-5528  
E:  
[coreenw@wieckwilson.com](mailto:coreenw@wieckwilson.com)

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 8<sup>th</sup> day of April, 2019, at Tacoma, Pierce  
County, Washington.



---

Michelle Hilger, Paralegal  
The Law Offices of Ben F. Barcus  
& Associates, PLLC  
[michelle@benbarcus.com](mailto:michelle@benbarcus.com)

**THE LAW OFFICES OF BEN F. BARCUS**

**April 08, 2019 - 3:55 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52271-3  
**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:**

- 522713\_Briefs\_20190408153700D2125733\_9820.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Appellants Opening Brief with Appendix 040819.pdf*

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

- Gregory.Worden@lewisbrisbois.com
- Taliah.Ahdut@lewisbrisbois.com
- ben@benbarcus.com
- coreenw@wieckwilson.com
- jeffrey.coats@farmersinsurance.com
- joe@koptamacpherson.com
- karen@524law.com
- mclifton@rmlaw.com
- mdiefenbach@gth-law.com
- michelle@benbarcus.com
- smith@sohalang.com
- sshaub@rmlaw.com
- thea@benbarcus.com
- thomas@sohalang.com
- tiffany@benbarcus.com
- tim@gosselinlawoffice.com
- vicki.milbrad@lewisbrisbois.com
- ybenson@gth-law.com

**Comments:**

Opening Brief

---

Sender Name: Michelle Hilger - Email: michelle@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 20190408153700D2125733**