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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 324621-III

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

RANDY L. BECHARD,

Plaintiff/Respondent,

v.

JOYCE DALRYMPLE,

Defendant/Appellant.

Appellant's OPENING BRIEF

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I. INTRODUCTION

After a five-day trial, a 12-member jury panel determined by unanimous verdict that Plaintiff failed to carry his burden of proving non-economic (general) damages. The jury heard evidence, testimony, and argument, and considered medical records and expert testimony that challenged the extent and nature of Plaintiff's injuries. Substantial evidence, including testimony from Plaintiff himself, was presented at trial that the claimed injuries were limited, minimal, and transitory. Notwithstanding the evidence, the trial court erroneously removed the verdict from the province of the jury and granted a new trial because the jury did not award general damages.

Longstanding Washington law provides that juries have the right to determine the amount of damages to award. This includes the right to award some but not all the requested damages. It includes the right to deny a request to award general damages for pain and suffering. There is no requirement that juries award general damages in a personal injury case.

Controlling case law from this Court stated in Lopez v. Salgado-Guadarama, 130 Wn. App. 87, 122 P.3d 733, review denied 157 Wn.2d 1011 (2005) affirms the jury's decision. The trial court's ruling ignored this well-established case law. That was an abuse of the trial court's discretion, and constitutes reversible error.

The trial court also erred in limiting the new trial to the issue of general damages. There is no authority in the trial court record establishing a right to segregate different aspects of damages for purposes of a new trial. If a new trial is granted, Defendant should have the opportunity to challenge both the extent and nature of the alleged injuries as well as the reasonableness and necessity of the medical expenses (*i.e.*, special damages).

The trial court's ruling should be reversed in its entirety. If the Court declines to do so, the trial court's ruling granting new trial solely on the issue of general damages should be reversed and a new trial granted on all damage issues.

II. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in entering the order of May 18, 2012, granting Plaintiff's Motion for a New Trial.
2. The trial court erred in entering the May 18, 2012 Partial Judgment on Special Verdict, awarding Plaintiff special damages.

Issues Pertaining to Assignments of Error

1. Is a jury required to award general damages simply because the defendant does not contest that an injury occurred, but where the defendant contests the extent and nature of the injury? (Assignment of Error 1).
2. Is a jury required to award general damages where it awards special damages, but where the defendant contests and disputes the nature and extent of the alleged injuries? (Assignment of Error 1).
3. Does the mere existence of an injury require the jury to award general damages? (Assignment of Error 1).
4. Is a trial court required to award a new trial on all damage issues where the jury award special damages but not general damages? (Assignment of Error 1 & 2).
5. Does a trial court abuse its discretion by ordering a new trial on the issue of general damages only in the absence of supporting authority? (Assignment of Error 1 & 2).

III. STATEMENT OF THE CASE

A. General Facts

This case involves alleged personal injuries to Plaintiff Randy Bechard sustained in an automobile collision with Defendant Joyce Dalrymple.

On July 19, 2007, Plaintiff was a passenger in a vehicle operated by his wife Linda Bechard. While he was being driven in the City of Yakima, his vehicle was struck by a vehicle driven by Defendant. (CP 4).

Ms. Bechard and Ms. Dalrymple were essentially uninjured in the accident. Mrs. Dalrymple did not seek any medical treatment and missed no work. (RP 347).¹ Mrs. Bechard received a bump on her knee, went from the accident scene to work, and recovered in a few days. (RP 104).

¹ There are several transcripts relevant to this appeal, including the trial transcript and hearings on Plaintiff's motion for a new trial. For clarity, in this brief Defendant uses "RP" always to refer to the Verbatim Report of Proceedings. For the other reports of proceedings, Defendant designates the date of the hearing before "RP" (*i.e.*, "3/21/14 RP").

Plaintiff did not seek medical care until eight days after the accident. (CP 31). He testified he did not believe he needed medical care. (RP 72-73). He went to Yakima Valley Memorial Hospital where he was seen and examined by Dr. Thomas Eglin. (CP 31). Dr. Elgin concluded that Plaintiff appeared “uninjured” when he presented, and he expected Plaintiff to recover in another week. (CP 31). Plaintiff’s x-rays were normal at that time. (CP 31).

Plaintiff filed a lawsuit in Yakima County Superior Court on June 21, 2010, claiming damages for personal injury, including pain and suffering. (CP 3-5). Defendant filed an answer on July 21, 2010. (CP 6-7). Defendant later admitted liability, reserving the issues of proximate causation and damages for trial. (CP 9).

B. Trial Testimony

The jury trial began on November 19, 2013. (RP 1). The parties presented conflicting testimony about the nature and extent of Plaintiff’s claimed injury.

Plaintiff's orthopedic expert, Dr. Daniel Seltzer, testified that Plaintiff's source of discomfort was a soft-tissue thoracic sprain he received after the accident. (RP 145, 149). He opined the sprain was an aggravation of a preexisting thoracic disk disease. (RP 145). He also opined that he does not think Plaintiff's condition will improve or worsen. (RP 148).

In her defense, Defendant produced substantial evidence disputing the damages. Defendant introduced testimony from Dr. James Blue, a neurosurgeon who conducted an independent medical examination of Plaintiff and reviewed his medical records. (RP 237-291).

Dr. Blue opined that Plaintiff had suffered a mild thoracic strain and should have fully recovered from the accident within three months. Dr. Blue testified that based on his examination no objective findings explain Plaintiff's reported pain, and no causal relationship exists between the pain and the accident. More precisely, he explained to the jury as follows:

Testimony	Reference
Plaintiff suffered a soft-tissue thoracic strain.	RP 282-283
The soft-tissue thoracic strain was short-lived and should have healed within a matter of months.	RP 283, 289
The soft-tissue thoracic strain would have healed within 3 months.	RP 289-290
Plaintiff has no definable injury or abnormality causing him pain.	RP 283
There is no relationship between the pain Plaintiff reported and the subject accident.	RP 283
There are no objective findings to explain Plaintiff's reported pain.	RP 284, 285
There are no objective findings that the accident aggravated a preexisting disk disease.	RP 284
Plaintiff's claimed loss of drive and loss of activities are unrelated to the accident.	RP 286-287
There is no evidence supporting any restriction on Plaintiff's ability to work.	RP 291
Plaintiff's condition is fixed and stable.	RP 284, 289-290
Plaintiff's reported pain is either due to financial or psychological reasons.	RP 286
Plaintiff's medical treatment after 3 months was not necessary.	RP 290

The jury was also presented evidence that the accident had minimal impact, if any, of Plaintiff's life. On cross-examination, Plaintiff testified he continued (and has continued to present time) with all his normal activities after the accident. (RP 66). He quit no activities as a result of the accident. (RP 66). He was also

able to continue the same rigorous physical activities he enjoyed before the accident, including hunting elk with a muzzle loader, restoring old cars, and camping in a fifth wheel trailer. (RP 66-71).

The jury also heard testimony that the accident failed to tangibly impact Plaintiff's work or mental health. After the accident, he continued performing the same physically-demanding work driving a propane truck and delivering propane and equipment to residential customers as far as 60 miles from Yakima. (RP 71). He has been able to perform all duties required of his job since the accident. (RP 71). He suffered no income loss or lost earning capacity as a result of the accident, and missed no work. (RP 71). He testified he is in good mental health, has a good marriage, and is generally a happy person. (RP 71-72).

Plaintiff continues to cut, bale, and sell hay from his property despite the accident. (RP 106-109). This includes three cuttings a year and 150 bales of hay per cutting on average. (RP

109). There was also testimony that Plaintiff has been building a bowling alley that is half finished. (RP 217-218).

As further proof that Plaintiff's claimed injury was unsubstantial, Defendant also pointed out that neither she nor Ms. Bechard had been seriously injured. Ms. Dalrymple received a bump on her head, received no medical care, missed no work after the accident, and recovered quickly. (RP 347). Ms. Bechard only received a bump on her knee. (RP 104).

The jury was instructed regarding the measure of damages and that the burden of proving damages rests upon Plaintiff. (CP 95-96).

C. Verdict and Procedural History

On November 22, 2013, after a five-day trial, the 12-member jury unanimously returned a verdict awarding Plaintiff

\$57,545.40 in special damages, but denying his request for future general damages. (CP 10).³

On December 13, 2013, Plaintiff filed a motion for a new trial, or in the alternative for additur. (CR 13). Plaintiff argued that the jury's award of only special damages was the result of passion and prejudice because the existence of an injury was not challenged. (CP 13-17).

Defendant responded that the jury's decision not to award Plaintiff general damages was well within the ambit of the evidence introduced at trial. (CP 26-29). She pointed out that the records from Dr. Eglin (introduced as exhibits at trial) and the testimony of Dr. Blue support the jury's conclusion that there was no objective evidence of an injury resulting from the accident and therefore no basis for awarding general damages.

Defendant also pointed out that this Court in Lopez v. Salgado-Guadarama upheld a jury's decision to award only

³ Plaintiff admits that a "significant" portion of the medical bills are diagnostic and not for treatment. (3/21/14 RP 8).

special damages under similar facts where the defendant disputed the nature and extent of the claimed injuries. (CP 28-29).

The trial court granted the motion for a new trial by memorandum opinion on December 23, 2013. (CP 48). The trial court concluded that Lopez was inapplicable because Defendant did not deny the existence of any injury. (CP 48). Despite not being asked to do so, the trial court granted the new trial as to general damages only. (CP 48).

Defendant moved for reconsideration on January 2, 2014, noting the verdict was consistent with the testimony and evidence presented at trial, which established that Plaintiff's injuries should have been short-lived, and that he remained able to continue his physically demanding profession and leisure activities even after the accident. (CP 49-52). Defendant argued that the trial court misread Lopez, and that under the trial court's misinterpretation, Defendant would have needed to challenge even the existence of an injury. (CP 49-52).

In the alternative, Defendant asked the trial court to award

an additur between \$25,000-\$35,000 in lieu of a new trial. (CP 49-50). Defendant also argued that the trial court erred in limiting the new trial to the issue of general damages. (CP 53-55).

The trial court heard oral argument on March 21, 2014. (See 3/21/14 RP). The trial court held that the award of zero general damages “was not supported by the substantial evidence in the record.” (3/21/14 RP 19-20). The trial court noted that an award of any other number would not have resulted in a new trial:

Okay. Although I would advise that if the jury had set the noneconomic damages at like a thousand dollars, we wouldn't be here The zero is the issue.

(3/21/14 RP 14-15).

The trial court declined to award an additur because it was unable to quantify Plaintiff's alleged pain and suffering. (3/21/14 RP 18). It ordered the new trial on the issue of general damages only, finding that the jury's award of special damages was supported by substantial evidence in the record. (3/21/14 RP 20).

On April 14, 2014, the trial court entered an order granting

a new trial on the basis that “substantial justice has not been done” and “there was no evidence or reasonable inference from the evidence to justify the verdict.” (CP 80). The trial court also entered a Partial Judgment on Special Verdict for the award of special damages. (CP 76).

Defendant filed a timely appeal. (CP 81).

IV. ARGUMENT

A. STANDARD OF REVIEW

The standard of review in a case involving a motion for a new trial is abuse of discretion. Fahndrich v. Williams, 147 Wn. App. 302, 305-06, 194 P.3d 1005 (2008). “Where the proponent of a new trial argues that the verdict was not based on the evidence, we look to the record to determine whether sufficient evidence, viewed in the light most favorable to the non-moving party, supports the verdict.” Id. (citing Palmer v. Jensen, 132 Wn.2d 193, 197, 937 P.2d 597 (1997)). “A trial court abuses its discretion by denying a motion for a new trial where the verdict is contrary to the evidence.” Fahndrich, 147 Wn. App. at 306.

B. THE TRIAL COURT ERRED IN GRANTING A NEW TRIAL AND DISTURBING THE VERDICT OF THE JURY WHERE DEFENDANT CONTESTED THE NATURE AND EXTENT OF THE ALLEGED INJURIES

“Determining the amount of damages is within the province of the jury, and courts are reluctant to interfere with a jury’s damage award.” Lopez v. Salgado-Guadarama, 130 Wn. App. 87, 91, 122 P.3d 733, review denied 157 Wn.2d 1011 (2005) (upholding verdict awarding only special damages). “Where sufficient evidence exists to support the verdict, a new trial should not be granted.” Id.

“A jury’s role in determining noneconomic damages is essential, and appellate review must be narrow and restrained.” Stevens v. Gordon, 118 Wn. App. 43, 59, 74 P.3d 653 (2003). “The court may not substitute its judgment for that of the jury unless no substantial evidence supports the damages.” Id.

Granting a new trial is not justified or appropriate merely because the jury declined to award part of the requested damages, such as general damages. There is no *per se* rule that general

damages must be awarded to every plaintiff who sustains an injury. Lopez, 130 Wn. App. at 91 (citing Palmer, 132 Wn.2d at 201). “A jury may award special damages and no general damages when ‘the record would support a verdict omitting general damages.’” Gestson v. Scott, 116 Wn. App. 616, 620, 67 P.3d 496 (2003).

“[W]here the amount of special damages is disputed and the injury and its cause uncertain, the court has been reluctant to disturb the finding of a jury.” Lopez, 130 Wn. App. at 91 (quoting Singleton v. Jimmerson, 12 Wn. App. 203, 205, 529 P.2d 17 (1974)).

Here, the trial court granted a new trial because the jury awarded only special damages, but no general damages. Binding precedent from this Court in Lopez demonstrates that the trial court erred. In Lopez, this Court addressed a similar situation where the jury awarded special damages, but no general damages. Contrary to the trial court’s conclusion here, this Court affirmed the jury verdict.

In Lopez, the plaintiff sustained injuries after an automobile accident with the defendant. The plaintiff was taken from the accident scene to the hospital via ambulance due to shoulder pain. Lopez, 130 Wn. App. 89. He “lost three days of work. Thereafter, he received extended care from a chiropractor, orthopedist, and physical therapist.” Id.⁴ He later sued the defendant in district court for special and general damages arising from the injuries sustained after the accident. Id.

As in this case, the defendant did not deny the accident caused the plaintiff an injury. Id. Instead, the defendant contested the nature and extent of the injury. Id. The defendant presented expert testimony from an orthopedist, Dr. Sears, who had conducted an independent medical examination of the plaintiff. Id. Dr. Sears testified that no objective medical findings supported the plaintiff’s extensive complaints of pain, and that any pain he experienced should have been short-lived: “[Dr.

⁴ In Lopez, a husband and wife were injured and jointly sued the defendant; however, this Court collectively referred to them in the singular as “Mr. Lopez.” Lopez, 130 Wn. App. at 89. For the sake of clarity, Defendant retains this singular designation throughout.

Sears] testified Mr. Lopez suffered a shoulder contusion, a minor injury not worthy of the extended medical treatment he received.” Id. at 90.

The jury returned a verdict in favor of the plaintiff, awarding him all of his requested special damages, but denying his request for general damages for pain and suffering. Id. The plaintiff appealed to the superior court, which reversed and remanded. The defendant then appealed to this Court, which reinstated the verdict.

This Court began by noting that general damages are not mandatory; “where the amount of special damages is disputed and the injury and its cause uncertain . . . the court has been reluctant to disturb the finding of a jury.” Id. This Court emphasized that, unlike cases where courts have upset jury verdicts and awarded new trials based on the insufficiency of the damage award, the defendant introduced evidence by means of expert medical testimony disputing the damages:

In her defense, Ms. Salgado–Guardarama offered the testimony of Dr. Stephen Sears, an orthopedist who conducted an independent medical examination of Mr. Lopez. He testified Mr. Lopez suffered a shoulder contusion, a minor injury not worthy of the extended medical treatment he received.

Lopez, 130 Wn. App. at 89-90 (emphasis added).

As a result, the Court determined that evidence was sufficient to support the conclusion that the jury found the plaintiff had failed to meet his burden of establishing general damages:

Here, the jury’s failure to award damages for pain and suffering was consistent with the evidence. In contrast to the facts presented in *Palmer*, the defense disputed every aspect of Mr. Lopez’s damages. Defense experts testified no objective medical findings supported Mr. Lopez’s extensive complaints of pain. Dr. Sears opined Mr. Lopez should have recovered from any injuries quickly after the accident.

As the jury was properly instructed in Instruction No. 20, the burden was on Mr. Lopez to establish pain and suffering to justify general damages. In only awarding economic damages, the jury obviously determined that Mr. Lopez failed to meet his burden. That conclusion is supported by the evidence presented at trial.

Id. at 92-93 (emphasis added) (internal citations omitted).

This Court specifically focused on the testimony from Dr. Sears that the injury was minimal and should have been transitory and short lived:

[J]uries [have] a measure of discretion to decline to award damages for pain and suffering in cases where the pain is minimal or transitory. Here, the evidence allowed the jury to conclude that any pain Mr. Lopez felt as a direct result of the accident was short-lived. Therefore, the jury's determination that Mr. Lopez did not carry his burden of proving that he suffered compensable pain was supported by sufficient evidence.

Id. (internal citations omitted) (emphasis added).

This Court noted that, as here, the jury had been instructed that the plaintiff had the burden of proving his damages, id. at 90, and had the discretion to decide whether the plaintiff met that burden, in whole or in part: “Given the evidence, the jury was entitled to conclude that the plaintiff incurred reasonable medical expenses as a result of the accident, while at the same time

concluding he failed to carry his burden of proving general damages.” Id. at 93.

Thus, in Lopez, this Court impliedly held that the existence of an injury itself does not require an award of general damages. A jury can—and did—conclude that a plaintiff can substantiate special damages but fail to substantiate general damages.

The key fact in Lopez was the defendant’s expert medical testimony that no objective medical findings supported the plaintiff’s extensive complaints of pain and that any pain was short-lived. Id. at 92–93. Thus, there was evidence supporting the jury’s decision not to award general damages.

Here, Defendant similarly presented such evidence. Like the defendant in Lopez, Defendant presented testimony from an expert medical witness who conducted an independent medical examination of Plaintiff. Dr. Blue specifically challenged and contradicted the extent and nature of Plaintiff’s injury. Dr. Blue testified that Plaintiff suffered a minor injury not worthy of the

extended medical treatment he received. Id. at 90. He testified that no objective medical findings support Plaintiff's extensive complaints of pain.

Dr. Blue also testified the injury should have been short lived and transitory, and that Plaintiff should have recovered three months after the accident. These facts are nearly identical to those in Lopez. As in Lopez, the jury's conclusion that Plaintiff failed to present sufficient evidence of pain and suffering was within the ambit of evidence presented at trial which the jury was entitled to consider.

Indeed, the facts of this case even more compelling than those in Lopez. In Lopez, the plaintiff's injury was apparent from the beginning. The plaintiff was taken to the emergency room by ambulance immediately after the accident with shoulder pain. He lost three days of work. Id.

Plaintiff, on the other hand, did not seek medical care until eight days after the accident because he felt he did not need treatment. (CP 31, 72-73). He was treated by Dr. Eglin at Yakima

Valley Memorial Hospital. (CP 31). Dr. Eglin’s records were admitted into evidence at the trial as Plaintiff’s Exhibit 17 and considered by the jury. (CP 12). Dr. Eglin’s records further evidence the lack of severity of Plaintiff’s injuries. Dr. Eglin concluded that Plaintiff appeared “uninjured” when he presented, and he expected Plaintiff to recover in another week. (CP 31). Moreover, Plaintiff’s x-rays were normal at that time. (CP 31). This is consistent with Dr. Blue’s assessment that Plaintiff suffered at most a minor injury.

Moreover, Plaintiff testified he was able to continue his physically demanding job and activities, and remains happy and healthy despite the accident. Specifically he testified:

Testimony	Reference
He missed no work and suffered no income loss or lost earning capacity as a result of the accident.	RP 71
He has continued to perform the same physically-demanding work driving a truck and delivering propane and equipment for over six years since the accident, including delivering to customers up to 60 miles from Yakima.	RP 71
He can perform all required tasks for his job despite the accident.	RP 71

He quit no activities as a result of the accident.	RP 66
He has continued to cut, bale, and sell hay since the accident.	RP 106-109 ⁵
He has partly constructed a bowling alley.	RP 217-218
He testified he is in good mental health, has a good marriage, and is generally a happy person	RP 71-72

This testimony demonstrates that the minimal impact the accident had on Plaintiff's life and livelihood. Plaintiff's testimony alone provided sufficient evidence for the jury to conclude he did not carry his burden of proving he suffered compensable pain and suffering.

As in Lopez, the evidence and testimony presented to the jury allowed it to properly conclude that any pain Plaintiff felt as a result of the accident was short-lived. Lopez is good law and controls here. It has not been reversed or amended; notably, the Supreme Court declined to review Lopez. Thus, the Supreme Court clearly is comfortable with Lopez as controlling precedent.

Per Lopez, the jury was entitled to parse the divergent opinions and testimony presented to it and conclude that Plaintiff

⁵ This testimony was provided by Plaintiff's wife, Linda Bechard.

incurred reasonable medical expenses as a result of the accident, while at the same time that he failed to carry his burden of proving general damages. See Lopez, 130 Wn. App. at 93.

The jury's determination that Plaintiff did not carry his burden of proving that he suffered compensable pain was thus supported by sufficient evidence. Therefore, the trial court erred in ordering the new trial.

C. THE TRIAL COURT ERRED IN DIRECTING A NEW TRIAL SOLELY ON THE ISSUE OF GENERAL DAMAGES

The trial court's order directing a new trial solely on the issue of general damages was an abuse of discretion because it is unsupported by authority and severely prejudices Defendant. Plaintiff's *Motion for New Trial* relied solely on Palmer v. Jensen, 132 Wn.2d 193, 197, 937 P.2d 597 (1997) and Fahndrich v. Williams, 147 Wn. App. 302, 194 P.3d 1005 (2008). (CP 14-17). In its memorandum opinion, the trial court relied solely on Palmer as the controlling case, and cited no other authority in support of its ruling. (CP 48).

Neither of those cases, however, suggests that a court can segregate different aspects of damages when ordering a new trial. The Supreme Court in Palmer remanded for a new trial on the issue of all of the plaintiff's damages. Palmer, 132 Wn.2d at 203. It did not limit the new trial to general damages only.

Similarly, Fahndrich did not limit the new trial to general damages only. Division Two of the Court of Appeals overturned the jury verdict awarding special damages but no general damages, and remanded “for a new trial on damages.” Fahndrich, 147 Wn. App. at 309.

Defendant is aware of no published case law in this State allowing a trial court to sever general and special damages for the purposes of a new trial. While CR 59 contemplates granting a new trial on fewer than all issues, a new trial may only be granted on “some of the issues when such issues are clearly and fairly separable and distinct.” CR 59(a). A partial new trial should not be granted unless the issues are so distinct and separate that the new trial may be had without injustice and

without complication with other issues. Cramer v. Bock, 21 Wn.2d 13, 149 P.2d 525 (1944).

For example, in Washington liability and damages are usually separable and can be tried separately. See Holt v. Nelson, 11 Wn. App. 230, 243, 523 P.2d 211 (1974) (“Where the initial trial has settled the issue of liability without error but the question of damages remains to be resolved, a retrial on damages alone may be entirely proper.”).

Plaintiff (and the trial court), however, provided no authority that special and general damages are clearly or fairly separable. Unlike the issues of liability and damages, which are separate and distinct, special and general damages are so blended and interwoven that it would be improper to restrict the new trial to general damages alone.

To force their separation here would severely prejudice Defendant. If a jury is to consider whether Plaintiff is entitled to general damages, Defendant should be allowed to introduce evidence and challenge both the nature and extent of those

alleged injuries and the reasonableness and necessity of the medical expenses Plaintiff claims are associated with those injuries. This is consistent with the majority view that doubts as to whether a new trial limited to damages is appropriate should be resolved in favor of a complete new trial. 58 Am. Jur. 2d New Trial § 28; Bullock v. Philip Morris USA, Inc., 159 Cal. App. 4th 655, 696-97, 71 Cal. Rptr. 3d 775 (2008).

V. CONCLUSION

The jury weighed the conflicting evidence and unanimously determined Plaintiff is not entitled to general damages. The trial court removed the verdict from the hands of the jury and granted a new trial based upon a flawed understanding of the law and a misunderstanding of the facts in Lopez.

This Court's opinion in Lopez establishes that the jury properly determined that Plaintiff failed to meet his burden of proving general damages. Its verdict was within the range of evidence; substantial evidence was presented at trial challenging

the extent and nature of the alleged injuries. The trial court should have entered a judgment consistent with the jury's verdict. Its decision not to do so was unsupported by substantial evidence and was an abuse of its discretion. The trial court's ruling should be reversed.

The trial court also erred in limiting the new trial to general damages. Washington law does not support such a limitation. In the event the Court decides not to reverse the trial court's grant of the new trial, the Court should reverse the trial court's decision to limit the new trial to general damages, and award a new trial on all damage issues.

Respectfully submitted this 22 day of August, 2014.

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CERTIFICATE OF TRANSMITTAL

I certify under penalty of perjury under the laws of the State of Washington that the undersigned caused a copy of this document, Defendant's Opening Brief, to be sent to the attorney(s) of record listed below as follows:

<u>For Respondent:</u> Russell J. Mazzola, Esq. Mazzola Law Offices 314 N. Second Street Yakima WA 98901	<input type="checkbox"/> via U.S. Mail <input type="checkbox"/> via fax <input type="checkbox"/> via e-mail <input checked="" type="checkbox"/> via hand delivery

DATED this 22nd day of August, 2014, at Yakima, Washington.



Carol L. Switzer, Legal Assistant
Meyer, Fluegge & Tenney, P.S.