

FILED
Court of Appeals
Division III
State of Washington
7/9/2020 12:39 PM

No. 36580-8

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

RICHARD EGGLESTON, and
SHANNON EGGLESTON, husband and wife,

Appellant

v.

ASOTIN COUNTY, a public agency, and
ASOTIN COUNTY PUBLIC WORKS DEPARTMENT, a public agency,

Respondent

REPLY BRIEF OF APPELLANT

TODD S. RICHARDSON, WSBA #30237
Attorney for Appellant, Richard Eggleston
Law Offices of Todd S. Richardson, PLLC
604 Sixth Street
Clarkston, WA 99403
509/758-3397, phone
Todd@MyAttorneyTodd.com, email

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I. INTRODUCTION

After listening closely to 5 days of trial, and after being properly instructed, a 12 person Walla Walla County jury carefully considered the case before it and *unanimously* determined that Asotin County committed breach of contract, water trespass and inverse condemnation against Richard and Shannon Eggleston and damaged the Eggleston's in the amount of \$1.65 million.

The breach of contract claim involved the County's failure/refusal to preserve the 3 driveways agreed to in the contract¹; the failure/refusal to put in the 2 large rockeries which were agreed upon; and failure/refusal to properly install the waterline as agreed.

The inverse condemnation claim involves the loss of value of the

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The County erroneously argues (Res.Br. at 5) that "the parties agreed to two approaches." In truth, there was never an agreement for only 2 approaches (driveways). (*See i.e.*: Ex1, p.13 (Linda Raber Diary), Ex1, p.19 (Construction Memo), Ex 30 (the 2010 Construction Plans), Ex34 (September 2012 Construction Plans). The County unilaterally chose to reduce from 3 approaches to 2 after Eggleston's sought an injunction to stop the County from running the storm water onto the Eggleston land. (RP260, ll 2-10.) When the project was finished, the County left the Eggleston's with a solitary usable driveway instead of the 3 which the parties contracted for.

land given the County cutting off the business access² and the use of the Eggleston's land as a storm water swale.

The water trespass involved the County running great amounts of the storm water from the project down the Eggleston's driveway, and the damages therefrom.

Asotin County moved for a new trial contending that the verdict was not "based upon evidence presented at trial, is contrary to the jury instructions, is duplicative and is based upon emotion and prejudice."

The trial court agreed with the jury that Asotin County had breached their contract, they had trespassed on the Eggleston's property by directing their stormwater onto the Eggleston's property and they had effected a takings (via inverse condemnation). But the trial court found that the verdict amount was "surprising" and that the verdict did "appear to have been arrived at as the result of passion (in this case, anger) or

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The County erroneously argues that the "business approach was also the basis of the inverse condemnation" (Res. Br. at 5; *see also*: Res.Br. at *fn5*.) It is the *taking* or *inverse condemnation* of the business use of the land which is the basis for this. Failure to properly build the access is a contract claim, completely blocking the business access is a takings. The County is now attempting to suggest confusion, though there was none at the trial, no objections to evidence or argument, and nothing preserved for appeal.

prejudice against an overbearing government agency”. As a result, the trial judge granted the motion for new trial unless the Eggleston’s were willing to accept a remittitur to \$1,000,000³.

Eggleston’s appealed, assigning error to the trial court’s finding of passion or prejudice (Assignment of Error 1) and the trial court’s finding that there is not substantial evidence to support the jury’s verdict (Assignment of Error 2). The County has not assigned any error and did not cross appeal.

II. ARGUMENT

1. THE JURY VERDICT IS SUPPORTED BY SUBSTANTIAL AND UNREBUTTED EVIDENCE AND MUST STAND

a. Standard of Review

The standard of review is *de novo*. This standard is established by statute and by caselaw.

The legislature weighed in on this issue nearly 100 years ago, in 1933, when they passed RCW 4.76.030. The statute sets out the

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The County errs in claiming that “Plaintiff’s declined the remittitur.” In fact, the Plaintiff’s neither accepted nor rejected it but filed this appeal. The trial court’s order for a new trial was signed without presentment and without signature from Plaintiffs.

reviewing standard:

... upon such appeal the court of appeals or the supreme court shall ... review *de novo* the action of the trial court in requiring such reduction or increase, and there shall be a presumption that the amount of damages awarded by the verdict of the jury was correct and such amount shall prevail, unless the court of appeals or the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as **unmistakably** to indicate that the amount of the verdict must have been the result of passion or prejudice.

RCW 4.76.030 (emphasis added.)

In 2005, the Supreme Court considered the history, the statute, the precedent, and concluded precisely the same:

we hold that a trial court order remitting a jury's award of damages is reviewed *de novo* since it substitutes the court's finding on a question of fact.

Bunch v King Co. Dept. of Youth Svcs., 155 Wn.2d 165, 176, 116 P.3d 381 (Wash. 2005).

Any room for doubt or debate as to the proper standard of review was laid to rest with that pronouncement. The reviewing standard is *de novo*.

b. Jury verdicts are to be rarely overturned.

i. Jury verdict must be protected unless the high burden of showing "unmistakably" that damages are "flagrantly

outrageous and extravagant"

Statutes and caselaw establish and repeatedly confirm this high burden. We find it, repeated for a second time, in this legislative dictate:

If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction

RCW 4.76.010⁴.

This twice stated legislative standard remains unchanged.

This standard is so well entrenched in caselaw it barely needs citation; but given the County's misapprehension of the law, we will briefly set it out. In 2010, Division 2 of this Court summarized it as follows:

When reviewing a trial court's ruling on a motion for remittitur, " **we strongly presume the jury's verdict is correct,**" *Bunch*, 155 Wash.2d at 179, 116 P.3d 381 (quoting *Sofie v. Fibreboard Corp.*, 112 Wash.2d 636, 654, 771 P.2d 711, 780 P.2d 260 (1989)); thus, we will not disturb a jury's damages award " unless it is outside the

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That the legislature found it sufficiently important to twice state this standard is notable for the clarity of direction to the courts. Washington courts have followed this guidance and have maintained this high standard.

range of substantial evidence in the record, or shocks the conscience of the court, or appears to have been arrived at as the result of passion or prejudice" after viewing the evidence in the light most favorable to the non-moving party.[16] *Bunch*, 155 Wash.2d at 179, 116 P.3d 381 (quoting *Bingaman v. Grays Harbor Cmty. Hosp.*, 103 Wash.2d 831, 835, 699 P.2d 1230 (1985)). When the proponent of a new trial argues that the verdict was not based on the evidence, [we] review[] the record to determine whether there was sufficient evidence [17] to support the verdict. *Sommer*, 104 Wash.App. at 172, 15 P.3d 664.

Collins v Clark Co Fire Dist. No. 5, 155 Wn.App. 48, 82, 231 P.3d 1211 (Div. 2, 2010) [emphasis added]⁵.

Since 1985 the Supreme Court has set the standard as follows:

"Before passion or prejudice can justify reduction of a jury verdict, it must be of **such manifest clarity** as to make it **unmistakable**." *Bingaman v. Grays Harbor Cmty. Hosp.*, 103 Wash.2d 831, 836, 699 P.2d 1230 (1985) [emphasis added]⁶.

In 2005, the Supreme Court reminded us of a standard set out in

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See also: Cox v Charles Wright Academy, Inc., 70 Wn.2d 173, 176, 422 P.2d 515 (Wash. 1967), "Regardless of the court's assessment of the damages, it may not, after a fair trial, substitute its conclusions for that of the jury on the amount of damages. [citation omitted.]"

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The strong language of the Courts on this issue is notable. The Washington Supreme Court is not noted for their hyperbole, thus the language choice in these cases serves to affirm the high standard being imposed.

an 1812 New York case, and fully embraced in Washington in 1953:

"The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, **beyond all measure, unreasonable and outrageous**, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be **flagrantly outrageous and extravagant**, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess."

Kramer v. Portland-Seattle Auto Freight, Inc., 43 Wash.2d 386, 395, 261 P.2d 692 (1953) (quoting *Coleman v. Southwick*, 9 Johns. 45, 6 Am. Dec. 253 (N.Y.Sup.1812) (Kent, Ch. J.)).

Bunch, at 179 [emphasis added].

The County, again, errs by insinuating that there is a *separate standard* for review depending on the reason for the remittitur. Res.Br., *see i.e.*: p. 19, *fn* 8, p. 20. This attempted "sleight-of-hand standard" is without support; a changing standard is not the law and the County's efforts fail. There is only one standard: *de novo*, and "[t]his Court should not substitute its judgment for that of the trier of fact. [*Thorndike v Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959).]" (Res.Br. at 27) **In the case at bar, the jury was the trier of fact.** And the jury was unanimous.

ii. The reviewing court is to take the evidence, and all reasonable inferences, in the light most favorable to the non-moving party.

The County agrees with the Eggleston's on this point. (Resp. Br. at 25.) Where the County fails in this regard is in recognizing the evidence the jury had before it for consideration. The County would have this Court incorrectly believe that the only evidence before the jury was the testimony of Steve Knight, a realtor⁷ who testified for the Eggleston's. The County ignores substantial evidence that the jury saw and heard. When there is substantial evidence, the jury is the final arbiter of the effect and consequence of the evidence. *Cox*, at 176-77.

c. We look to the record.

The truth is: the jury DID have unchallenged **expert**⁸ evidence

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The County erroneously refers to Mr. Knight as an “appraiser.” The only evidence before the jury from an appraiser is from the County’s appraiser. The County had an appraiser and appraisal reviewer involved, their evidence/testimony was before the jury through Exhibit 1 as well as testimony from Mr. Eggleston; a fact which was ignored by the County.

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The County’s appraiser is an expert and his evaluation was before the jury as **unchallenged fact**. Indeed, as will be further shown below, the questioning of Mr. Knight by the County’s attorney established the land’s value to be *consistent* with what the County’s appraiser established it as.

before it:

- The County's appraiser established the price of the land. That established price was reviewed by the appraisal review staff hired by the County.

- The County accepted that appraised price.

- Mr. and Mrs. Eggleston accepted that appraised price.

- And yet, the County now complains that the jury also accepted that appraised price.

d. The evidence the trial court did not consider.

In granting a new trial, the trial court did not consider all the evidence before the jury regarding the value of the land. What the jury had before it, and we can reasonably conclude they considered, is as follows:

- **EX1**, relevant pages of which are attached hereto as Attachment A, is the acquisition diary of Linda Raber. This exhibit is referenced throughout the trial. It repeatedly addresses the appraisal and the payment of \$134,200 for .38 acres of land.

- **EX6**, attached hereto as Attachment B, email exchange between Mr. Eggleston and Ms. Raber confirming the price for the land at \$134,200.

- **EX39**, attached hereto as Attachment C, is the offer letter:

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all the elements which contribute to the market value of your property. By law, they must disregard any general increase or decrease in value caused by the project itself.

Based upon the market value estimated for your property, our offer is \$134,200.00 (rounded). This offer consists of \$132,332.00 for 0.38 acres of land in fee including damages and \$1,800.00 (rounded) for 0.37 acres Temporary Construction Easement.

(Emphasis in original.)

- **RP 130, ll. 3-22**, attached hereto as Attachment D (offer was \$134,200)

- **RP 183, ll. 14-21**, attached hereto as Attachment E (offer was \$134,200 for .38 acres and testimony as to what damages were included.)

- **RP 687, l. 22 - p. 689, l. 12**, attached hereto as Attachment F,

(Joel Ristau, former County Engineer testifying of the \$134,200 for .38 acres)

Additionally there was the testimony of Mr. Steve Knight, which has been discussed to some degree. But it is important to point out the **testimony solicited from Mr. Knight by counsel for the County**, which includes the following:

- **RP 476, ll. 11-16**, attached hereto as Attachment G: there are 8 acres including a large pasture and an “exclusive beach.”

- **RP 477, ll. 1-9**, attached hereto as Attachment H: property next door to the Eggleston’s land sold for \$100,000 per acre and it did not have beach access and the Eggleston land is more valuable because of the beach access. (RP 477, ll. 15-16)

e. When the missing evidence is included with that which the trial court considered; the evidence supports a much larger verdict than what was actually awarded.

The jury had a substantial amount of evidence before it to support a simple mathematical calculation: if .38 acres is worth \$132,332 (EX39)⁹,

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We use \$132,332.00 because of the definitive language of EX39; though we recognize the jury could have used \$134,200 for the 0.38 acres due to the other testimony and language in EX1.

then a WHOLE acre is worth \$348,242! ($132,332 \div 0.38 = 348,242.00$)
That makes the value of the 8 acres: $348,242 \times 8 = 2,785,937$ which is the
total value of the land. So, determining the damages is amenable to a
mathematical calculation: total value of the land less the residual value of
the land after the takings. The residual value: \$350,000 (Steve Knight's
direct testimony) and \$800,000 (cross examination of Knight). Thus our
mathematical calculation: $2,785,937 - 350,000 = 2,435,937$ and $2,785,937$
 $- 800,000 = 1,985,937$. The damage range for this element is between
\$1,985,937 and \$2,435,937.

This is CONSISTENT with the testimony that the County elicited
from Mr. Knight. The land NEXT DOOR (without a business and without
an exclusive beach access), sold for \$100,000 per acre¹⁰.

It was the County's appraiser, who walked the land with Mr.
Eggleston (RP 67) and who was aware of the beach and the business, and
who established the price of \$348,242 per acre. That value was reviewed
by the appraisal reviewer hired by the County. That value was accepted
by the County. That proportional value was offered to the Eggleston's.

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Mr. Knight's report of the land being worth \$100,000 per acre corresponds
with the County's appraiser-set value (\$127,193/acre)

The Eggleston's accepted that value.¹¹

The dollar figures were repeatedly established for the jury. The jury was the finder of fact. The jury only need do some simple mathematical calculations based on repeatedly established testimony and exhibits. The jury calculated the damage award included in the verdict.

Though the testimony of Mr. Knight was challenged on cross examination; there was no cross examination nor rebutting testimony or contrary evidence to the County's appraisal. Thus, the unchallenged, and well-established evidence of the "market value of the land" (EX39) was there to be used by the jury.

Taking the evidence in the light most favorable to the Eggleston's, the range of damages far exceeds the \$1,650,000 that was awarded; which strongly mitigates against a finding of passion and prejudice.

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The County repeatedly, and erroneously (and irrelevantly (remembering that closing argument is NOT evidence)), argues that Plaintiffs didn't ask for the \$1.65 million in damages. In closing arguments it certainly was presented to the jury: RP730, ll. 9-25, "damages can go up to 2.4 million dollars." "If it's worth that much, it's worth that much and give that much." The County would have you believe that a jury cannot award more than is sought in closing; but that is wrong. "Under-ask, and over-deliver" allows the attorney to maintain credibility with the jury without over-reaching, but empowers the jury to award full justice. It may not be common to trust a jury to see justice and do it, but the Eggleston's did.

As instructed in Instruction No. 4, the jury is “not ... required to accept” the opinion of a testifying expert. Given that there was substantial other evidence the jury could rely upon, the County’s concern that the award did not strictly follow Mr. Knight’s testimony is of no merit.

The jury was correctly instructed that their “award must be based upon evidence and not upon speculation, guess or conjecture.” Instruction No. 24, CP44.

We have good reason to conclude that they followed the instructions carefully and returned a verdict greater than what the Eggleston’s *initially* asked for in closing¹² (*but see: fn 11, supra*), but NOT greater than the evidence supports, **indeed it is somewhat less than the evidence supports.**

As demonstrated above, ample evidence supports the value calculation made by the jury. The trial court erred. This Court should reverse and remand.

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Closing arguments are not evidence; the County’s focus on what was asked for in closing argument is misplaced.

2. THE TRIAL COURT ERRED IN FINDING THAT THE VERDICT WAS A RESULT OF PASSION OR PREJUDICE

As noted above, the Washington Supreme Court has established a high bar to the finding of passion or prejudice: "... it must be of such **manifest clarity** as to make it **unmistakable**." *Bingaman*, at 836 [emphasis added]; "strike mankind, at first blush, as being, **beyond all measure, unreasonable and outrageous** ... must be **flagrantly outrageous and extravagant** ..." *Bunch*, at 179 [emphasis added].

The *Collins* court stated that it requires "such a feeling of prejudice [has] been engendered or located in the minds of the jury as to prevent [the] litigant from having a fair trial." *Collins* at 81 (internal citations omitted.)

The trial court's findings do not meet this standard.

The trial court stated, "[s]uch an award was surprising to say the least, and it does appear to have been¹³ arrived at as the result of

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Comparing the language of the trial court to the language of the legal standard as set by the legislature and courts:

Trial Court says it was "surprising" and "does appear to have been"

vs.

"manifest clarity" [*Bingaman*], "so excessive as unmistakably to indicate" [RCW 4.76.010, .030, *Bingaman*], and "beyond all measure, unreasonable and outrageous" [*Bunch*], and "flagrantly outrageous and extravagant" [*Bunch*].

passion (in this case, anger) or prejudice against an overbearing government agency.”

The County implicitly agrees that the trial court’s findings do not meet the standard; the County bluntly states: “**This is not a question of passion or prejudice.**” Res.Br. at 24 [emphasis in original]. And the “County is arguing that the verdict is excessive because it is outside the range of evidence.” *Id.*¹⁴

The County accurately notes that “[t]his Court should not substitute its judgment for that of the trier of fact.” Res.Br. at 27 (citation omitted). But, the County errs by attempting to substitute the judge for the jury, when the jury is the actual trier of fact.

The letter ruling imputed bias or prejudice because Plaintiffs’ proved their case, as follows [*claim that was proved*]:

Plaintiffs ... deliberately drove home the point that Asotin County treated Mr. Eggleston badly throughout the entire project. [*Proof of breach of good faith and fair dealing*]... There was testimony that the dirt slope was constructed instead of the designed and promised rockeries to minimize construction costs. [*Proof of breach of contract,*

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After arguing for a few pages that this case is NOT about passion or prejudice, the County reverses itself on p.26 and attempts to argue that it is. Yet, except for a single quote from the memorandum opinion, the County offers nothing to support its contradictory claim.

the claimed reason does not excuse the breach.] The County ignored Mr. Eggleston's concern about drainage issues [Proof of water trespass, in various ways and in numerous locations and the damage inflicted thereby] and refused to make any concessions to adjust the guardrail blocking the business driveway. [Breach of contract by failing/refusing to provide the agreed upon driveway, in the location agreed upon and the resultant taking of the business access to the land]...

CP 76.

The Eggleston's proved that the County breached the contract, directed storm run-off onto their property, and completely blocked the business driveway. These are proofs of breach of contract (including by breaching the duty of good faith and fair dealing, about which the trial court properly instructed the jury with Instruction No. 22 (CP41)), water trespass, and inverse condemnation. The County is the one who chose to breach the contract in multiple ways; Eggleston's cannot be accused of creating passion and prejudice against the County just because they proved the multiple breaches *as the burden of proof required*. The County chose to direct their stormwater onto the Eggleston property; the Eggleston's proved it *as required by law*. The County chose to inversely condemn the Eggleston property; the Eggleston's proved it, as was legally necessary.

If the trial judge and jury were offended by the County's actions, it is of no consequence as the Eggleston's *still had the duty to prove the actions* to meet their burden of proof. It is only of consequence if the offense raised passions sufficiently to deny the parties a fair trial. *Collins*, at 81.

Was the jury convinced of the County's wrong-doing? They must have been, as they awarded the *requested* damages¹⁵. Was the County's behavior offensive? It is reasonable to believe that good people are offended by the government repeatedly breaching a contract, etc; it even seems that the trial judge was offended. *But that is not the standard*. It is insufficient and incorrect to say that reasonable people are offended by the County's bad actions and therefore the damage award must be reduced.

The standard of proof to set aside a verdict on the basis of passion or prejudice is the standard set forth twice by the legislature, and repeated and amplified in caselaw going back over 200 years:

"The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, beyond all measure, unreasonable and outrageous, and such as manifestly show

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See *fn 11, supra*.

the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess."

Bunch, at 179 [citing *Kramer*, and *Coleman*]¹⁶.

One cannot credibly say the damages at issue reached this level, *especially given that the damages are less than the full amount proven.*

The trial court must be reversed, and the judgment must be reinstated.

3. ATTORNEY FEES

An award of attorney fees IS appropriate in this case. The County errs in their argument for a variety of reasons, including:

- 1) The Complaint properly seeks attorney fees as authorized by the law.
- 2) Attorney fees have been sought in the trial court, and

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Similarly, in determining whether the jury's verdict should stand, what matters is whether there was substantial evidence in the record the could support the jury's verdict; the law doesn't care if the trial judge, however good he may be, remembered the evidence when ruling on the remittitur (thus the *de novo* review standard). The question is whether there is evidence in the record; and there, undeniably, was substantial evidence in this record supporting the jury's verdict.

responded to by the County without objection to amount or authority to receive; they only argued against a multiplier.

- 3) Attorney fee award from the appellate court is always raised for the first time on appeal. In making the request for attorney fees, the Eggleston's have complied with RAP 18.1.
- 4) Inverse condemnation IS a form of eminent domain, and attorney fees are authorized by RCW 8.25.075. The County argues that the award is only available "if there is a final adjudication of condemnation." By awarding damages for inverse condemnation, there IS a final adjudication of condemnation, and the fees are appropriate.

The Eggleston's recognize that they relied upon RCW 4.84 when they applied to the trial court for fees and costs. That statute is a valid and proper basis for fees and costs, both at the trial level as well as here. The citation for fees under RCW 8.25 is an additional basis for an award of fees herein.¹⁷

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The Motion for Attorney Fees and Costs, and the supporting Declaration and Memorandum have been supplementally designated as Clerk's Papers; as has the County's response in which they do not contest the propriety of

Attorney fees and costs should be awarded to the Eggleston's.

III. CONCLUSION

Twelve reasonable people were formed into a jury; there were no objections to this jury of our peers. This jury carefully listened to evidence produced over 5 days. They were correctly instructed on the law. They took the evidence and argument of counsel (evidence and argument which was presented by both sides) and carefully and deliberately considered it. Arguments were made for damages up to \$2.4 million dollars, and the jury *unanimously* found that the evidence supported damages in the amount of \$1.65 million.

This verdict amount is easily calculated, using simple math, based on the substantial documentary and testimonial evidence presented to the jury.

When *all* the evidence is considered, the jury produced a reasonable and supported verdict, a verdict that warrants the “strong presumption” of being correct, a verdict that must prevail.

an attorney award, but argue against the application of a Lodestar multiplier. The County's argument against attorney fees in the response is disingenuous, at best, and worthy of a finding of judicial estoppel.

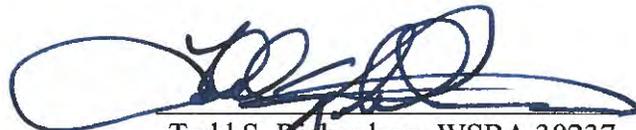
The verdict evinces a jury working to ensure that passion and prejudice did not enter into verdict amount, and yet accounts for the damages proved.

In short, the jury did what they were supposed to do: relying on the substantial evidence before them, they produced a just verdict and treated both parties fairly.

The trial court's order must be reversed.

Respectfully submitted this 9 day of July, 2020.

Law Offices of Todd S. Richardson, PLLC

A handwritten signature in blue ink, appearing to read 'Todd S. Richardson', written over a horizontal line.

Todd S. Richardson, WSBA 30237
Attorney for Eggleston's

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of July, 2020, I caused a true and correct copy of this **REPLY BRIEF OF APPELLANT** to be filed with the Court of Appeals Division III via JIS-Link, and that through their email service be served on the following:

Gerald John Moberg
MOBERG RATHBONE KEARNS
124 3rd Avenue SW
Ephrata, WA 98823-5100
jmoberg@mrklawgroup.com

James Edyrn Baker
MOBERG RATHBONE KEARNS
P.O. Box 130
Ephrata, WA 98823-0130
jbaker@mrklawgroup.com



Todd S. Richardson
Attorney for Appellant

ATTACHMENT

A

DIARY OF RIGHT OF WAY ACTIVITIES
ACQUISITION

Agent: Melinda Raber
Property & Acquisition Specialist

Project Title: Ten Mile Bridge #1

Parcel No: 5-00105
Sheet: 2 of 3

Appraisal- \$134,132.00 (\$134,200.00 rounded)
Fee: \$62,732.00
Damages: \$71,400.00

Contact: Richard J. Eggleston
Shannon M. Eggleston
7357 Snake River Road
Asotin, WA 99402-9504

Phone: (509)243-6030 Home (509)243-3545

11/17/08: Al Rouse assigned this file to me. The legal descriptions have been forwarded from the consultant and a copy of the cover letter that Al prepared. We are waiting for remaining appraisals before starting the offer letters.

11/21/08: All appraisals, DV's and corrected AOS's are here and per Al we are ready to send out the offers with the exception of confirmation from the County pertaining to the usage of the eminent domain language in the offers.

11/25/08: Risa Foley and I will be working jointly on this project with each of us assigned specific files. We sat down and went over the plan sheets and prepared all forms for each file.

12/1/08: I have reviewed the legal description and will get the documents ready today. I have an address but at this time I do not have a phone number.

Raber EXHIBIT 2
DATE 9-30-15 M.J.N.

PLAINTIFF'S
TRIAL EXHIBIT
1

12/2/08: AI has been given the ok on the eminent domain language for the offer letter. He has asked that we hold off on mailing the offer letters as the county is trying to verify additional funds needed before mailing offers.

1/5/09: AI has stated that the county has given the ok to move forward with the offer letters. The funding has been secured.

1/6/09: I have completed getting the offers ready for certified mail.

1/7/09: The offer letter was mailed out today under certified number 7003 2260 0003 8214 8338. The Offered amount is \$134,200.00 Rounded.

1/9/09: The certified package was signed for by Shannon Eggleston.

1/12/09: I received the certified receipt back from the post office.

1/13/08: I have reviewed the appraisal again to make sure I have a familiar understanding of the value. Mr. Eggleston has made it known that he is not in favor of this project and will most likely ask many questions as to value
 Later in the day: I had a message from Mr. Eggleston stating that he had a few questions about the project. I returned the call and talked to Mr. Eggleston and asked what his questions for me were. He said he has a history with the county as being the trouble maker and was sure I had heard about it. I told him that I had not heard anything specific. He stated to me that his main concerns were in regards to the new driveway taking up a large portion of the horse pasture that now exists. It won't be large enough to accommodate a horse in the after. He also stated that it is his understanding that after the project is completed he will be left with one access point. He has young children and his concern for safety revolves around the fact that business people will be coming onto the property in larger rigs and without the business access it puts them on his residential driveway with children out there in the way. I told him that I would need to talk to the county about the access issue and at this point could make no promises.
 We made an arrangement to meet on Thursday the 15th of January at 8:00am.

1/15/09: Risa Foley and I traveled to Asotin to meet with Mr. Eggleston. Risa also had meetings with other property owners. It was decided that she should come along for my meeting to take notes because we anticipate a lot of questions that we will need to address. It was my understanding that he is not happy with the project and wants things to be quite a bit different than they are projected on the plan sheet.
 We met with Mr. Eggleston, his wife and another property owner from the project that happens to be the father of Mr. Eggleston's wife. The meeting was informative and for the first meeting my objective was to find out what Mr. Eggleston wants and how we can accomplish the settlement and make sure all the bases are covered. The meeting lasted four hours and was very productive. The overview to all the conversation that took place is that the Eggleston's need to address the access points and retain at least two of the four that they have now. The way the plan sheet shows the access it will take out a large portion of the horse pasture and they would like it reconfigured to save as much of the horse pasture as possible. We walked the property and looked at the issues with the

Agent Initials


access. I stated to him that if there is an issue with site distance or any other concerns that the county might have those issues would need to be addressed. He said if there is something about the distances and where the location has to be then he would want to be quoted an RCW or something from the Design Manual to justify the county's decision. I took some pictures of the area to take back to the county. The suggestion was made that he would be willing to put in his own roads once the approaches were determined and established. He stated that then he could put it in the way he wanted it to go across his property. I told him I would present that proposal to the county. Mr. Eggleston said he would expect to be paid the dollar value of how much it would cost the contractor to install the driveway.

The other big issue is the water line. The domestic water comes from a natural spring from across the road. The pipe for the water runs under the county road. He made the request that the line be put in a larger conduit than may be required so he would have plenty of room to maneuver if he ever needed to replace the line. Again, I told him this would all have to be confirmed with the county. During the conversations about both access and the water line there were many questions about the process and how it would be accomplished. I told Mr. Eggleston that once it was agreed with the county the changes would be made with a construction memorandum to assure that the changes were not overlooked but the details were impossible to address at this time. He had several smaller issues that included saving some of the trees and being able to perhaps use part of the right of way that runs along the toe of the slope. Again I told him that all this would need to be cleared with the county. Another issue that seemed small but that he stated was important to him is the location of the pig pen. Where it sits now is the only place on the property that they feel they want it because of the winds, flies, and everything else unpleasant that goes along with raising pigs. If they are allowed to leave it, a small portion will be at the toe of the slope and encroaching on county property.

There is one tree that falls just outside the new R/W. I told him if the ground needs to be disturbed it could damage the root system and he could loose the tree. He has several other trees along the road that work as a barrier. He wants to try and transplant some of those to a new location. He may want to go ahead with that the first sign of spring. I said I would double check with the county but didn't think that would be a problem. They are not going to use the trees for anything. They appear to be something like a Sumac shrub. **I made a verbal offer for the .38 of an acre needed plus the temporary construction easement for a total of \$134,200.00 (rounded) I also explained the \$750.00 allowed for the SEA if they are not satisfied with the appraisal.**

Mr. Eggleston said the money offered appears to be satisfactory provided we can come to an agreement on the issues he has raised. I asked him about the two loans on the property and let him know that we would need to get a partial release on both loans. He said that he is planning on refinancing and those two loans will go away. I said that we could give the legal description to the new lender and when they do the loan the legal would except the R/W portion out. He said no, he wanted to apply for the loan without mentioning the R/W and we would deal with it after the loan goes through. Again I told him that it will be up to the county to approve all requests made at this meeting. He asked that I send him a draft of what I would propose to the county prior to sending it to the county. I told him that I would do so. He wants to make sure everything we talked about would be addressed with the county.

Agent Initials


ATTACHMENT B

Raber, Melinda

From: Raber, Melinda
Sent: Tuesday, April 07, 2009 11:01 AM
To: 'Rich Eggleston'
Subject: RE: Wednesday Meeting

Meeting at 9am on Wed.the 8th in Public Works dept.

From: Rich Eggleston [mailto:rje@wildblue.net]
Sent: Monday, April 06, 2009 3:13 PM
To: Raber, Melinda
Subject: RE: Wednesday Meeting

Hi Linda,

What time is our meeting Wednesday?

I spoke with Amber (Wells Fargo) this morning, and re-sent the release; she hopes to have an authorization by Wednesday, I do not know if it will be in time for our mtg.

Attached is the quote we got from a local firm that does a lot of this kind of WSDOT and other State work. Your concern about having to get out and open a gate while towing a trailer being potentially dangerous is well taken. However, we only included electric openers on two of the gates, not all three. The most expensive opener would have been the business opening by the bridge; at this time we do not think that would be necessary. I only have one other cost item that we feel needs to be addressed (administratively?). During the course of evaluating this project, we were compelled to hire engineering services and consult our attorney to analyze our options. Not including my time, our expenses to date including legal work, reprographics, travel, and engineering are in excess of \$8500. Whatever you want to call it is fine by me, but this will need to be included for us to come to an agreement.

On Wednesday, if we can agree on approaches that work, the construction notes discussed (specify rock retaining walls, landscaping ok on ROW, pig pen modifications, and water-line modifications) and include the \$8500 administrative addition to the voucher (plus land (\$134,200) and fencing (\$20,450)), we will be prepared to sign your offer.

Please keep in mind that my offer stands for us to perform our own driveway work at the budget amount the county currently has scheduled for the planned improvements, whatever that may be. This should simplify their work: they build the approach to the ROW, we "feather in to the existing grade". The county/contractor doesn't have any issues about us complaining "it's not what we expected/agreed to" when it is done....just a thought.

As always, thanks for your help.
 R.

Rich Eggleston

From: Raber, Melinda [mailto:RaberM@wsdot.wa.gov]
Sent: Monday, April 06, 2009 8:49 AM
To: Rich Eggleston
Subject:

Rich and Shannon,

PLAINTIFF'S
 TRIAL EXHIBIT

6

20004726

4/7/2009

ATTACHMENT C



Asotin County
PUBLIC WORKS DEPARTMENT
P.O. Box 160
Asotin, Washington 99402-0160
Phone: (509) 243-2074
Fax: (509) 243-2003

County Roads

Sewer Department

Solid Waste Department

January 7, 2009

Richard J. Eggleston
Shannon M. Eggleston
7357 Snake River Road
Asotin, WA 99402-9504

OFFER LETTER

Ten Mile Creek Bridge Project – CRP 238
Federal Aid No. BRS-C023(008)
R/W Plan Sheet 2 & 3 of 3 Sheets
Parcel Number: 5-00105

Dear Property Owners:

The Asotin County Public Works Department plans to proceed with the above-titled public project. As a part of the project, we need to purchase your property and/or property rights identified on the "Right of Way Plan" by the "parcel number" listed above. The bearer of this letter is the department's agent in completing this transaction.

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all the elements which contribute to the market value of your property. By law, they must disregard any general increase or decrease in value caused by the project itself.

Based upon the market value estimated for your property, our offer is \$134,200.00 (rounded). This offer consists of \$132,332.00 for 0.38 acres of land in fee including damages and \$1,800.00 (rounded) for 0.37 acres Temporary Construction Easement.

Payment for your property and/or property rights will be made available to you by certified mail approximately 45 days after you accept the County's offer, provided that there are no delays in closing the transaction. The date on which payment is made available to you is called the "payment date". On that date, the County becomes the owner of the property purchased and responsible for its control and management.

You may wish to employ professional services to evaluate the County's offer. If you do so, we suggest that you employ well-qualified evaluators so that the resulting evaluation report will be useful to you in deciding whether to accept the County's offer. The County will reimburse up to \$750.00 of your evaluation costs upon submission of the bills or paid receipts.

If you decide to reject the county's offer, the county, acting in the public interest, will use its right of eminent domain to acquire your property for public use, and just compensation for your property will be determined by that process as prescribed by law.



20004663



ATTACHMENT D

1 land?

2 A. Yes, she did.

3 Q. And did, do you recall, or can you see there how much they

4 offered?

5 A. Yes.

6 Q. How much?

7 A. \$134,200, rounded.

8 Q. Now, pause for a second, because yesterday you heard Mr.

9 Christensen say that you were paid over \$160,000 for the

10 property?

11 A. Yes.

12 Q. Did they change that offer?

13 A. Well, not for the land.

14 Q. Okay. So was there payment for other things?

15 A. They told me that they wouldn't know how I would want the

16 fences, and so they would just give me the allowance for

17 the fences and we had to install our own fences so they

18 added that amount. And there was an administrative

19 addition at the end that was added on to it.

20 Q. Okay. So they actually paid 134,200 for the land and

21 temporary construction easement?

22 A. Correct.

23 Q. The rest was for other things?

24 A. Right.

25 Q. Okay. If you turn to page four?

ATTACHMENT E

1 A. Yes.

2 Q. And are those your signatures on the back, is that your
3 signature on the back page?

4 A. Yes, it is.

5 Q. The underlining on the back page, is that also done by you?

6 A. Yes, it is.

7 MR. RICHARDSON: Move forward admission of 39.

8 MR. CHRISTENSEN: No exhibit (sic.) No objection.

9 THE COURT: Did I miss something?

10 MR. CHRISTENSEN: I was choking on a mint when I was
11 starting to say that.

12 THE COURT: Exhibit 39 is admitted.

13 MR. RICHARDSON:

14 Q. Rich, I want to ask you about this middle paragraph here:

15 Based upon the market value estimated for your property
16 offer, 134,200, rounded, offer consists of this for land
17 and fee including damages plus 1,800 rounded, plus 3.7
18 acres construction easement. What were the damages that
19 you were being paid for?

20 A. Whatever additional intrusion that happened because of the
21 construction of the drives outside of the right-of-way.

22 Q. Okay. Let's turn to Exhibit 14.

23 A. Okay.

24 Q. And can you tell me what this is?

25 A. This is an email from Joel Ristau, County Engineer to me

ATTACHMENT F

1 were discussions before and after as to what maybe he would
2 like if the County was going to build these walls, correct?

3 By "he" I mean Mr. Eggleston?

4 A. Again, I don't recall specifics of those discussions.

5 Q. Okay. Counsel did bring up some emails where it was
6 discussed?

7 A. Right.

8 Q. The monies that were paid to Mr. Eggleston, was the payment
9 in consideration for them buying his land, correct? And
10 for the elements that were listed in the written agreement,
11 correct?

12 A. Yes.

13 Q. That was the consideration, that was the agreement, to your
14 understanding, correct?

15 A. Yes.

16 MR. CHRISTENSEN: Thank you.

17 THE COURT: Any follow-up?

18 MR. RICHARDSON: Yes.

19

20 RE-CROSS EXAMINATION

21 BY MR. RICHARDSON:

22 Q. You said that the amount paid to Mr. Eggleston for that
23 third of an acre was 132,000 and change, right?

24 A. The 132,000 and change included consideration of the --

25 Q. Temporary construction easement.

1 A. Yes. The actual property the temporary construction
2 easement, plus damages.

3 Q. Okay. How much did the County, what was the County's very
4 first offer to purchase the land? How much did they offer?

5 A. I don't recall there was an initial offer made.

6 Q. Well, then how did they get to that 134,200?

7 A. It was recommended from the WASH DOT right-of-way I believe
8 that it was based on the appraisal done.

9 Q. Okay. But that wasn't the question. The question was:
10 You said you didn't think there was an offer made. Wasn't
11 there an offer letter that was sent to him?

12 A. I guess I don't recall.

13 Q. Okay. Let me see if I can grab it for you. Well, let's do
14 it this way. Let's look at Ms. Raber's letter here. This
15 is in January, of 2009, at the first meeting between
16 Ms. Rayber and Mr. Eggleston. And her notes says: "I made
17 a verbal offer for the .38th of an acre needed plus the
18 temporary construction easement just like you said, Mr.
19 Ristau for total \$134,200, rounded. I also explained that
20 \$750 allowed for the SEA, if they are not satisfied with
21 the appraisal," right?

22 A. That's what it says.

23 Q. And how much did you say they actually paid him for that
24 land? Was it \$134,200?

25 A. That was the land portion of what they paid him.

1 Q. Right. So they, for the temporary construction easement
2 and .38ths of an acre, 134,200, that's what they offered
3 the first time, right?

4 So how did Mr. Eggleston respond? Do you remember?

5 A. Without reading -- that first sentence starts with "Mr.
6 Eggleston".

7 "Mr. Eggleston said the money offered appears to be
8 satisfactory, provided we can come to an agreement on the
9 issues he has raised."

10 Q. So there was more than just money that needed to be
11 resolved for this to happen, right?

12 A. (The witness nodded.) Yes.

13 Q. And when you said not everything in the, in her notes was
14 agreed to, you are right. Do you remember Mr. Eggleston
15 asked if he could have an easement to drive across that
16 right-of-way, and you said no. Right?

17 A. I don't recall that specifically, no.

18 Q. Okay. You would agree that there were discussions where
19 one thing was asked for and the other side would say no,
20 right? Do you remember any of that offer, the three months
21 of negotiations on this?

22 A. I agree that no may have been said on occasion but it was
23 typically when there is another alternative.

24 Q. Well, and I'm not suggesting that people quit working
25 together. I mean obviously you continued to negotiate and

ATTACHMENT G

1 some research.

2 Q. Okay.

3 A. If you want me --

4 Q. But these would be the fair values as of today?

5 A. Today.

6 MR. RICHARDSON: Okay. Thank you. I don't have any
7 other questions.

8

9

CROSS-EXAMINATION

10 BY MR. CHRISTIANSON:

11 Q. How much land is this? Do you know how much land Mr.
12 Eggleston has?

13 A. I believe about eight acres.

14 Q. About eight? So if we, and he's got a beautiful location
15 with a big pasture and exclusive beach, right?

16 A. Yes.

17 Q. So it's your statement if he went to sell it, it would be
18 worth this, and he would have to minus this, and this
19 somewhere in the middle there, so basically eight acres of
20 property on prime real estate is worth \$75,000; is that
21 your testimony?

22 A. No, sir.

23 Q. Well, isn't that the numbers you just said?

24 A. No. I said the rockery, if that had good access, that's
25 how much it would diminish the value.

ATTACHMENT H

1 Q. Well, if you're diminishing the value from 350 how much
2 does good land along that river go for for an acre?

3 A. That property is very valuable. Right next to it sold for
4 100,000 an acre.

5 Q. Okay. Is, does the one next to it have a beach?

6 A. No.

7 Q. Okay. But you said that beach adds a lot of value to the
8 property?

9 A. It does.

10 Q. 100,000 an acre, eight acres, 800,000, plus you have to
11 add, because the beach would add, even without a rockery
12 retaining wall, without a business drive, it is still worth
13 \$800,000 or more, isn't that right, according to your math?

14 A. No.

15 Q. What am I missing?

16 A. It's the access that we're missing.

17 Q. Okay. But if I was to go buy that property because I
18 wanted to put a business in, wouldn't I be able to sell
19 that for 800,000 to a million dollars if I owned that
20 because it has that exclusive beach and that exclusive
21 eight acres of beautiful pasture land? According to your
22 numbers it's almost worthless at this point.

23 A. It's not worthless. It's worth about \$350,000.

24 Q. But then you also said you have to minus other things, too.
25 Let me ask you something: It sounds to me, and I actually

THE LAW OFFICES OF TODD S. RICHARDSON, PLLC

July 09, 2020 - 12:39 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36580-8
Appellate Court Case Title: Richard & Shannon Eggleston v. Asotin County, et al
Superior Court Case Number: 13-2-00226-5

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