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No. 89902-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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by H

RAYMOND GROVE,

Petitioner,

v.

PEACEHEALTH ST. JOSEPH HOSPITAL,

Respondent.

**PETITIONER'S ANSWER TO BRIEF OF AMICUS
CURIAE WASHINGTON STATE ASSOCIATION FOR
JUSTICE FOUNDATION**

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ORIGINAL

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ARGUMENT

Petitioner Raymond Grove agrees with almost all of the analysis advanced by the Washington State Association for Justice Foundation (“WSAJF”), so he will focus here on the area of disagreement.

The WSAJF agrees with Grove that the principles of *Hansch v. Hackett*, 190 Wash. 97, 66 P.2d 1129 (1937) apply to this case and are unaffected by chapter 7.70 RCW. WSAJF Amicus Br. at 13. It argues, however, that because “CR 50(b) review arguably focuses on sufficiency of the evidence under the governing substantive law rather than the jury instructions and verdict form,” the Court need not “address whether the principles announced in *Hansch* apply in this context.” *Id.* at 12–13. Grove respectfully disagrees. Because both this case and *Hansch* were about sufficiency of the evidence, this case requires addressing *Hansch*.

The WSAJF’s position assumes that *Hansch* dealt with “the jury instructions and verdict form” rather than “sufficiency of the evidence under the governing substantive law.” *Id.* at 13. In *Hansch*, however, this Court was reviewing a denial of a judgment n.o.v., *Hansch*, 190 Wash. at 98—which under present terminology is a judgment as a matter of law, *see Goodman v. Goodman*, 128 Wn.2d 366, 368 n.1, 907 P.2d 290 (1995). In *Hansch*, moreover, the parties challenged neither the jury instructions nor the verdict form. *Hansch*, 190 Wash. at 102–03. Instead, the question

the Court answered (in the affirmative) was whether “the law, properly applied, permits the verdict.” *Id.* at 103. So *Hansch*, like this case, was about sufficiency of the evidence.

While the *Hansch* Court dealt with a verdict in which the jury found the corporate defendant liable but exonerated an employee of that corporate defendant, the case was not about the correctness of the verdict form itself. Rather, just as in this case, the Court took the verdict form as a given and answered whether the evidence could support the substantive verdict announced on the form. *Hansch*, in other words, asked whether the evidence was sufficient to sustain the verdict under a legally correct rationale.¹ Thus, for example, the *Hansch* Court summarized the evidence and noted that the “jury might have found that Dr. Clark was negligent in one or more of several ways”—just as, here, the jury could have found PeaceHealth liable in one or more of several ways. *Id.* at 101–02. This was in line with the correct standard of review, which, as the WSAJF points out, does not attempt to reconstruct the jury’s actual thought processes.

¹ The WSAJF states: “CR 50(b) analysis asks whether there was sufficient evidence to send the case to the jury.” WSAJF Amicus Br. at 11 n.7. Asking whether the evidence is sufficient to send the case to the jury is just another way of asking whether the evidence is sufficient to sustain a verdict for the plaintiff under some legally correct rationale. If the evidence is sufficient to sustain a verdict for the plaintiff, then it must be sufficient to send the case to the jury. For that reason, this Court has often phrased the inquiry in terms that ask whether the evidence is “sufficient to sustain the verdict” rather than in terms that ask whether the evidence is sufficient to send the case to the jury. *E.g.*, *Goodman*, 128 Wn.2d at 371 (citation and internal quotation omitted).

WSAJF Amicus Br. at 11 n.7. Instead, the standard of review in this case and *Hansch* asks whether the jury *could have* correctly reached the verdict it did.

Like this case, *Hansch* was about sufficiency of the evidence.

Hansch guides the analysis here.

Respectfully submitted this September 3, 2014.

s/ Benjamin Gould _____

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on September 3, 2014, I caused a true and correct copy of the foregoing PETITIONER'S ANSWER TO BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION FOR THE JUSTICE FOUNDATION to be served on the following via email, pursuant to RAP 18.5(a) and CR 5(b)(7):

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Subject: No. 89902-9, Grove v. PeaceHealth St. Joseph Hospital

Dear Clerk:

Attached for filing, please find *Petitioner's Answer To Brief Of Amicus Curiae Washington State Association For Justice Foundation* and *Petitioner's Answer To Brief Of Amici Curiae Washington State Medical Association And Washington State Hospital Association*.

Below is the case information:

Case name: Grove v. PeaceHealth St. Joseph Hospital,
Case number: 89902-9

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Thank you.

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