

Court of Appeals No. 63958-7

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

RICHARD HUNT,

Appellant,

vs.

DANILO SIJERA; COMCAST OF WASHINGTON IV, INC; AND
AMY THAYER,

Respondents.

BRIEF OF RESPONDENT THAYER

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ORIGINAL

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COURT RULES

CR 682

MAR 7.32

A. **ASSIGNMENTS OF ERROR**

None

B. **ISSUES PERTAINING TO APPELLANT'S ASSIGNMENT
OF ERROR**

None.

C. **STATEMENT OF THE CASE**

This appeal springs from a jury trial of an injury claim on de novo appeal from a Mandatory Arbitration award arising from two separate accidents in King County. The first involved defendant Comcast (hereinafter Comcast) in February 2007; the second involved defendant Thayer (hereinafter Thayer) in April 2007.

The matter was tried to the jury over four days in the court below and resulted in a verdict against Comcast in the amount of \$6,990 in past economic damages and non economic damages and a defense verdict regarding Thayer. (CP 516-517) As a result plaintiff Hunt had improved his position over the MAR award against Comcast but did not improve his position against Thayer.

Hunt moved for a new trial or in the alternative additur on two grounds: first, the verdict of economic damages but no non economic damages was defective; second, the failure of the trial court to admit the massage therapist bill into evidence.

In a very well reasoned ruling denying the motion the trial court spelled out how the verdict was supported by the evidence (or lack thereof). (CP 553-555)

The trial court entered judgment based on the verdict awarding cost to Comcast pursuant to CR68 (an offer of judgment had been made) and awarding cost and attorney fees to Thayer pursuant to RCW 7.06.060 and MAR 7.3. (CP 548-552)

This appeal followed.

D. ARGUMENT

In the interest of brevity and economy Thayer adopts the responsive brief of Comcast but makes the following additional points

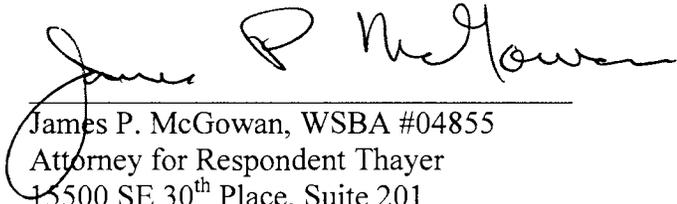
1. There are no Assignments of Error directed at the verdict and judgment as it relates to Thayer. A defense verdict was rendered and there are no issues presented regarding that portion of the verdict or judgment.
2. Thayer specifically adopts the responsive brief of Comcast relating to the evidentiary issue involving the massage therapy bill
3. Thayer asks for attorney fees involved in this appeal pursuant to MAR 7.3 and RCW 7.06.060.

E. **CONCLUSION**

The trial court was correct in denying the motion for New Trial and in the evidentiary ruling on the massage bill. Those ruling should be affirmed.

DATED THIS 26 day of February, 2010.

Law Offices of
Hollenbeck, Lancaster, Miller & Andrews

A handwritten signature in black ink, appearing to read "James P. McGowan", is written over a horizontal line. The signature is fluid and cursive.

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APPENDIX

RCW 7.06.060

1) The superior court shall assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who voluntarily withdraws a request for a trial de novo if the withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

(2) For the purposes of this section, "costs and reasonable attorneys' fees" means those provided for by statute or court rule, or both, as well as all expenses related to expert witness testimony, that the court finds were reasonably necessary after the request for trial de novo has been filed.

(3) If the prevailing party in the arbitration also prevails at the trial de novo, even though at the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.

CR 68

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

MAR 7.3

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

DECLARATION OF SERVICE

I declare that on February 26, 2010, I served a true and correct copy of Brief of Respondent Thayer by delivering the same to the following attorneys of record by U.S. Mail, postage prepaid:

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Executed at Bellevue, WA on this 26th day of February, 2010.

By: 
Danielle E. Hoover