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COURT OF APPEALS  
DIVISION II

Court of Appeals No. 36967-2-II

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STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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DAVID FAHNDRICH and CINDY FAHNDRICH, a marital community  
under the laws of the State of Washington and JENEE FAHNDRICH,  
an individual,

Appellants,

v.

LINDA WILLIAMS and JOHN DOE WILLIAMS, a marital community  
under the laws of the State of Washington; and  
CLIFFORD MULLINS and SHELLY MULLINS, a marital community  
under the laws of the State of Washington,

Respondents.

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**REPLY BRIEF OF APPELLANTS**

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## I. INTRODUCTION

Defendant Mullins has misstated some of the facts involved in this case. Plaintiffs take exception to the following statements:

- (1) In Mullins' Brief, p. 3 "Fahndrich's subsequent TMJ symptoms did not arise until several months after the November 2 accident (*Id.* at 161)"

**Reply:** In a chart note dated November 2, 2000, which was probably made the day after the November accident, Dr. Smith identified tenderness and spasm to Plaintiff's temple and her right TMJ area, which were new injuries not present before the second accident. Spasms are identified by Dr. Smith: "it's like an involuntary contraction of muscle tissue. . . . It is an objective finding." (CP 404) Dr. Smith has twice been awarded the "Outstanding Chiropractor of the Year" award which is given by a company who receives nominations, does research, sends a patient to the chiropractor and does a background on the chiropractor's history. As far as he knows, he is the only chiropractor in the Vancouver area to have been awarded this honor. (CP 398) Dr. Smith's expertise in dealing with TMJ injuries started in chiropractic school when he had a

patient who had three previous operations for TMJ. He knows of only two dentists he can refer TMJ patients to and, in fact, two dentists refer patients to him for such problems. (CP 399)

(2) In Mullin's Brief, p. 6:

Fahndrich did not feel like she was injured in the collision and, after exchanging information with Mullins, she continued on to school. (8/2/07, RP 106-107).

The next day, Fahndrich returned to the chiropractor complaining of neck and headache pain similar to that sustained in the first accident (CP 79).

**Reply:** Mullins leaves out the fact that after the November accident, Jenee Fahndrich continued to school but she called both her mother and father immediately afterwards and "My neck was starting to be sore at that point, yeah." (RP 108) She finished her day at school and "then I went home, and in the evening my neck was really starting to hurt and my head was hurting as well." (RP 108) "And I—I believe my upper shoulders were just really tight along with everything else." (RP 108)

(3) Again, in Mullins' Brief, p. 6, "In late January or early February 2001, Fahndrich began complaining of TMJ symptoms."

**Reply:** This is simply not true. She complained of TMJ symptoms the day after the accident to Dr. Smith. See (1) above. Also, see Dr. Eugene Kelly's testimony that it's not unusual for someone to develop TMJ problems two, three, or even four months after an automobile accident and that this results from a "masking" of symptoms relative to the injury. (CP 26)

## **II. ISSUES PERTAINING TO INADEQUACY OF THE RECORD**

Defendants complain that the record is inadequate. However, all of the testimony regarding Jenee Fahndrich's injuries is in the record. Defendant Williams denied that she was negligent and denied that her negligence was the proximate cause of any of Jenee Fahndrich's injuries. Defendant Mullins admitted that she was negligent, but denied that her negligence was the proximate cause of any of Jenee Fahndrich's injuries. The jury was instructed on negligence (Instruction No. 4), contributory negligence (Instruction No. 6), proximate cause (Instruction No. 11). The jury was also instructed that they had to apportion any liability and

damages awarded between the persons at fault. The jury was also instructed that

In addition, both defendants have alleged that some of plaintiff's injuries and damages were caused by another accident, due to the liability of a person who is not named as a defendant in this case. The defendants have the burden of proving their claim that a non-party shares fault for plaintiff's damages. If you find that the July, 2002 accident caused damages to plaintiff, your verdict should not include any damages caused by that accident.

(Instruction No. 13)

The Defendants admitted that Jenee Fahndrich was injured but denied the extent of those injuries. For example, *see* Williams' Brief at pages 2-5. Williams' argument is that most of her long term problems were caused by the second accident. *See* Williams' Brief at pages 4-5.

Finally, the Court instructed the jury that "If you find that the negligence of the Defendants combined to cause indivisible harm to Plaintiff Jenee Fahndrich, the Defendants have the burden of proving what harm each of them caused." (Instruction No. 15) The jury instructions are attached as Appendix No. 1 to this Reply Brief.

The jury found that Defendant Williams' negligence was a proximate cause of damage to the Plaintiff. (CP 178, Question No. 1, Appendix 2). The jury also determined that Jenee Fahndrich was not negligent and that therefore there is no issue of proximate cause. (CP 178-

179, Question No. 2, Appendix 2) The jury also found that the negligence of Defendant Mullins was a proximate cause of damage to the Plaintiff. (CP 179, Question No. 5, Appendix 2) Neither Defendant appealed the jury's determinations regarding their negligence and proximate causation. It was the Defendants' responsibility to allocate their share of damages to the Plaintiff. They were successive tort-feasors under *Phennah v. Whalen*, 28 Wash. App. 19, 621 P.2d 1304 (1980) and *Cox v. Spangler*, 141 Wash. 2d 431, 5 P.3d 1265 (2000).

Williams complains that the record does not include the testimony of Fahndrich's experts, Wayne Slagle and Dr. Michael Freeman, or of their experts, Larry Tompkins and Terrence Honikman. All of these witnesses testified regarding proximate cause, not the causation of the injuries. Their testimony, therefore, is irrelevant to the issues before this Court.

In *Ma'ele v. Arrington*, 111 Wash. App. 557, 45 P.3d 557 (2002), the Court allowed a biomechanical engineer to testify that a low-speed collision did not produce enough force to injure a motorist. The motorist had two chiropractors testify that the collision did cause the injuries. The Court discussed cases cited by the Plaintiff.

In each case, the plaintiff was entitled to a new trial because the jury found that the accident caused injuries but believed the plaintiff suffered no pain. *See, e.g., Palmer*,

132 Wash.2d at 203, 937 P.2d 597. The cases are distinguishable. The jury here found that the accident did not injure Ma'ele. The only question is whether the evidence supports this conclusion.

*Ma'ele, supra* at 562. In our case, the jury found that the accidents did injure Plaintiff Fahndrich. The jury found both negligence and proximate cause. The issue of negligence and proximate cause are not issues before the Court because the Defendants did not appeal them. Therefore, the testimony of the biomechanical engineers and engineers is irrelevant to any issue before the Court. Similarly, the testimony of Linda Williams and Shelly Mullins concerning the circumstances of the accidents is irrelevant. It is a given before this Court that both Defendants were negligent and their negligence was the proximate cause of injuries to the Plaintiff. The only question is the extent of those injuries.

RAP 9.2(c) permits the appealing party to arrange for the preparation of less than all of the verbatim report provided it serves on the Respondents a description of the verbatim report which the party intends to include in the statement of the issues the party intends to present on review. The Statement of Arrangements advised the Defendants that Plaintiffs were getting the transcripts of certain witnesses, i.e., Crystal Fletcher, Sonja Riesterer, Lisa Schilling, Lisa Hayes, Dr. Kelly Smith, Krissy Allsup, David Fahndrich and Jenee Fahndrich. The parties already

knew that the testimony of all of the other doctors were perpetuated and available. There has been no complaint about these being part of the record. Plaintiff also noted in the Statement of Arrangements that one issue was whether there was sufficient evidence in the record to require that the jury awards some special damages. Therefore, the Statement of Arrangements complies with RAP 9.2(c) and there has been no failure to follow the Appellate Rules of Procedure in this case.

### **III. WAIVER**

CR 59(a)(7) allows for a new trial when there is no evidence or reasonable inference from the evidence to justify the verdict and (9) allows for a new trial when substantial justice has not been done. CR 59(a)(7) and (9) specifically allow for the procedure followed in this case. A jury found negligence and proximate cause, found some economic damages but the rest of its award was unjustifiable and substantial justice has not been done. To adopt the Defendants' view that one must object to an award that is unjust at the time it is rendered would mean that this rule is rendered superfluous. There are numerous Washington cases that have followed the same procedure. The list of the cases following this procedure are too numerous to mention. *See* generally 4 Wash. Prac. (2006) (discussion of CR 59 "Grounds for new trial--Excessive or inadequate damages—Generally" at 484-488 and 493-

499). Based on this rule, it doesn't make sense to require a party to ask a jury to reconsider an inadequate award. What instructions would the Judge give? What standards would be used? Would a Judge determine that an award would have to be between \$X and \$Y to be justified?

The Defendants have found three cases nationwide to support their argument. A review of these cases show that they are not pertinent to this matter. In discussing Washington's CR 59, Tegland in 4 Wash. Prac. (2006) at page 467 warns in comparing the federal rule to Washington's rule "Washington's version of CR 59 is largely home-grown and differs significantly from FRCP 59. The federal rule does not even list the grounds for a new trial. As a result, federal case law may not be controlling and should be consulted with caution." The same can be said of the Civil Rules of states of Oregon, Missouri and Nevada. Oregon's Rule 64B provides six grounds for a new trial, listed as follows:

B(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having fair trial.

B(2) Misconduct of the jury or prevailing party.

B(3) Accident or surprise which ordinary prudence could not have guarded against.

B(4) Newly discovered evidence, material for the party making the application, which such party could not with reasonable diligence have discovered and produced at the trial.

B(5) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B(6) Error in law occurring at the trial and objected to or excepted to by the party making the application.

Nevada's rule on new trials, NRCP 59(a)(6), allows for a new trial for "Excessive damages appearing to have been given under the influence of passion or prejudice" but does not include anything similar to Washington's CR 59(a)(7) or (9). Missouri's rule on granting a new trial, 78.01, only states:

The court may grant a new trial of any issue upon good cause shown. A new trial may be granted to all or any of the parties and on all or part of the issues after trial by jury, court or master. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact or make new findings, and direct the entry of a new judgment.

Although Oregon's Rule 64B(5) is similar to Washington CR 59(a)(7), it is different and Oregon's rules contain nothing similar to Washington's CR 59(a)(9). Missouri's and Nevada's rules are so dissimilar as their case law may not be controlling and should be consulted with caution.

All Defendants have shown is that three out of 50 states follow a different procedure than that followed in Washington. There is no reason for the Washington Courts to invalidate CR 59(a)(7) and (9), and adopt rules from foreign states that do not fit with its history. CR 59 plays a

very important role in Washington jurisprudence. Its purpose is to correct errors occurring at a trial without the necessity of an appeal. The basis for the grounds for a new trial is the inherent power of the Court to correct any errors in its proceedings that have had a material effect on the outcome of the trial, prevented a fair and impartial treatment of all of the parties and resulted in a possible miscarriage of justice. This Court should be very careful in jettisoning a long history of cases where new trials have been granted when there is no evidence or reasonable inference from the evidence to justify the verdict.

The Courts of Oregon, Nevada and Missouri do not give any guidance to a Washington Court on whether or not to allow a new trial. Thus, the cases cited by the Defendants are of little value and contain no guidance for this Court.

Washington follows the rule that in order to lay the foundation for a later motion for a new trial, an objection must be made or some request for relief made during the trial. For example, in *Casey v. Williams*, 47 Wash. 2d 255, 287 P.2d 343 (1955), a juror fell asleep three times during the trial but Plaintiff did not seek a mistrial. At the conclusion of the trial, a motion for new trial was granted. This was reversed by the Supreme Court stating that a party knowing of misconduct must seek relief at the time the misconduct occurs and he cannot gamble on the verdict and seek

relief later by way of a new trial. However, “no objection during trial is necessary when the motion for new trial is based upon something than events at trial—newly discovered evidence, juror misconduct during deliberations, error in the assessment of damages, or the like.” 4 Wash. Prac. at 471. Likewise, a verdict is not an event that happens at trial. It takes place after the trial has ended.

Cases are, of course, fact-specific and thus have only limited precedential value. Based on their facts though, the cases cited by Plaintiffs in their Opening Brief clearly show that this case is one where a new trial should be granted. The evidence is overwhelming that Plaintiff Jenee Fahndrich suffered injuries in both accidents. Defendants Williams and Mullins were successive tort-feasors. They have the burden to allocate the injuries sustained by Jenee Fahndrich to them. Clearly, Jenee Fahndrich was injured in both accidents and it is the Defendants’ burden to determine who is responsible for them.

#### **IV. MEDICAL EXPENSES**

The bills for Dr. Kelly Smith are testified to CP 440-441. Dr. Smith’s medical bills between the two accidents was \$3,500.00. His medical bills after the second accident were \$2,600.00 for a total of \$6,100.00.

Kaiser's medical bills for all of Jenee Fahndrich's treatments related to the automobile accident were \$10,800.02. (RP 48).

Dr. Thomas testified regarding the medical bills of Dr. Blessing-\$246.00; Dr. Bell-\$2,364.50; Cascade Sports Medicine and Rehabilitation Clinic-\$1,634.00; North Pacific Physical Therapy-\$304.00; Massage Works-\$1,386.00; Carolyn Walker, PT-\$147.00; Brenda Mork, massage therapist, \$819.00; and Laurelhurst Physical Therapy-\$1,513.00. (CP 356-357) The total of these bills is \$8,413.00.<sup>1</sup>

The total amount of the medical expenses listed above is \$25,313.52.

All of the above doctors testified to the reasonableness and necessity of the treatments and to the reasonableness of the charges made.

## V. CONCLUSION

Based on all of the above, the Plaintiffs ask this Court to grant the Plaintiffs a new trial. Because the Defendants did not appeal the findings of negligence and proximate cause, those issues should not be part of a

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<sup>1</sup> Dr. Eugene Kelley testified regarding the treatments by Dentist Dr. Boice-\$163.00; Dr. Nutter-\$395.00; and Orthopedic & TMJ Physical Therapy Center-\$1,175.00. (CP 51-53). The total amounts testified to by Dr. Kelley equals \$1,733.00, but these amounts were objected to and the objections were sustained.

new trial. The Plaintiffs ask the Court to remand this matter to the trial court for a new trial on the issue of damages only.

Respectfully submitted this 10<sup>th</sup> day of JUNE, 2008.

LANDERHOLM, MEMOVICH,  
LANSVERK & WHITESIDES, P.S.



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MICHAEL SIMON, WSBA No. 10931  
Attorneys for Appellants

**CERTIFICATE OF SERVICE**

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08 JUN 12 PM 1:01  
STATE OF WASHINGTON  
BY: [Signature]

The undersigned hereby certifies as follows:

1. My name is Linda N. Gill. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party of this action.

2. On the 10<sup>th</sup> day of June, 2008, copies of the foregoing **REPLY BRIEF OF APPELLANTS** were delivered via first class United States Mail, postage prepaid, to the following persons:

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4004 SE Division Street  
Portland, OR 97202-1645

**I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

DATED: June 10, 2008  
At: Vancouver, Washington

[Signature]  
LINDA N. GILL



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Sherry W. Parker, Clerk, Clark Co.

*John B. [Signature]*  
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

DAVID FAHNDRICH and CINDY  
FAHNDRICH, a marital community under the  
laws of the State of Washington, and JENEE  
FAHNDRICH, an individual,

Case No. 02 2 04343 1

Plaintiffs,

v.

LINDA WILLIAMS and JOHN DOE  
WILLIAMS, a marital community under the  
laws of the State of Washington, CLIFFORD  
MULLINS and SHELLY MULLINS, a marital  
community under the laws of the State of  
Washington,

Defendants.

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**Court's Instructions to the Jury**

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DATED 8-3-07

*[Signature]*

The Honorable John P. Wulle

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

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

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

15          As jurors, you have a duty to consult with one another and to deliberate with the intention  
16   of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial  
17   consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In  
18   the course of your deliberations, you should not hesitate to re-examine your own views and to  
19   change your opinion based upon the evidence. You should not surrender your honest convictions  
20   about the value or significance of evidence solely because of the opinions of your fellow jurors.  
21   Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

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

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

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INSTRUCTION NO. 2

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

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

INSTRUCTION NO. 3

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

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

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INSTRUCTION NO. 4

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

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

INSTRUCTION NO. 6

Contributory negligence is negligence on the part of a person claiming injury or damage that is a proximate cause of the injury or damage claimed.

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If you find contributory negligence, you must determine the degree of negligence, expressed as a percentage, attributable to the person claiming injury or damage. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will apportion damages, if any.

INSTRUCTION NO. 8

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

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INSTRUCTION NO. 9

Every person has the right to assume that others will use ordinary care and comply with the law, and a person has a right to proceed on such assumption until he or she knows, or in the exercise of ordinary care should know, to the contrary.

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INSTRUCTION NO. 10

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles lawfully approaching on said highway.

INSTRUCTION NO. 11

The cause of an injury is a proximate cause if it is related to the event in two ways:

1. The cause produced the injury in a direct sequence; and
2. The injury would not have happened in the absence of the cause.

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INSTRUCTION NO. 12

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



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INSTRUCTION NO. 14

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

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiff and that in so acting or failing to act, the defendant was negligent;

Second, that the plaintiff was injured.

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

With respect to the first accident involving defendant Williams, defendant Wililams has the burden of proving the following propositions:

First, that the plaintiff acted, or failed to act, in one of the ways claimed by the defendant, and that in so acting or failing to act, the plaintiff was negligent;

Second, that the negligence of the plaintiff was a proximate cause of the plaintiff's own injuries and was therefore contributory negligence.

INSTRUCTION NO. 15

Burden of Proof, Indivisible Harm:

If you find that the negligence of the Defendants combined to cause indivisible harm to Plaintiff Jenee Fahndrich, the Defendants have the burden of proving what harm each of them caused.

INSTRUCTION NO. 16

Indivisible Harm:

Indivisible harm is that kind of harm that cannot be clearly attributed to only one accident or another.

INSTRUCTION NO. 17

If you find that:

- (1) before the occurrence of November 2, 2000, the plaintiff had a pre-existing bodily condition that was causing pain or disability, and
- (2) because of this occurrence the condition or the pain or the disability was aggravated,

then you should consider the degree to which the condition or the pain or disability was aggravated by this occurrence.

INSTRUCTION NO. 18

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Any award for future economic damages must be for the present cash value of those damages.

Non-economic damages such as pain and suffering are not reduced to present cash value.

"Present cash value" means the sum of money needed now which, if invested at a reasonable rate of return, would equal the amount of loss at the time in the future when the expenses must be paid or the earning would have been received.

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality.

In determining present cash value, you may also consider decreases in value of money that may be caused by future inflation.

INSTRUCTION NO. 19

According to mortality tables, the average expectancy of life of a woman aged 23 years is 56.91 years. This one factor is not controlling, but should be considered in connection with all other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question.

INSTRUCTION NO. 20

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

If your verdict is for the plaintiff, then you must first determine the amount of money required to reasonably and fairly compensate the plaintiff for the total amount of such damages as you find were proximately caused by the negligence of the defendant, apart from any consideration of contributory negligence.

If you find for the plaintiff, you should consider the following economic damage elements:

1. The reasonable value of necessary medical care, treatment and services received to the present time;
2. The reasonable value of necessary medical care, treatment and services with a reasonable probability to be required in the future;
3. The reasonable value <sup>of</sup> <sub>^</sub> earnings with reasonable probability to be lost in the future.

In addition, you should consider the following non-economic damage elements:

1. The nature and extent of injuries;
2. The pain and suffering both mental and physical, and inconvenience, mental anguish, and emotional distress, experienced and with reasonable probability to be experienced in the future.

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

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

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

INSTRUCTION NO. 21

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2 Upon retiring to the jury room for your deliberations, first select a presiding juror. The  
3 presiding juror shall see that your discussion is sensible and orderly, that you fully and fairly  
4 discuss the issues submitted to you, and that each of you has an opportunity to be heard and to  
5 participate in the deliberations on each question before the jury.

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

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

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

18 If you need to ask the court a question that you have been unable to answer among  
19 yourselves after reviewing the evidence and instructions, write the question simply and clearly.  
20 The presiding juror should sign and date the question and give it to the bailiff. The court will  
21 confer with counsel to determine what answer, if any, can be given.

22 In your question, do not indicate how your deliberations are proceeding. Do not state how  
23 the jurors have voted on any particular question, issue, or claim, nor in any other way express  
24 your opinions about the case.

25 In order to answer any question, ten jurors must agree upon the answer. It is not  
26 necessary that the jurors who agree on the answer be the same jurors who agreed on the answer

1 to any other question, so long as ten jurors agree to each answer.

2           When you have finished answering the questions according to the directions on the  
3 verdict form, the presiding juror must sign the form, whether or not the presiding juror agrees  
4 with the verdict. The presiding juror will then tell the bailiff that the jury has reached a verdict,  
5 and the bailiff will bring you back into court where your verdict will be announced.

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**FILED**

AUG 06 2007  
@ 10:27am  
Sherry W. Parker, Clerk, Clark Co.  
Jury Polled - unanimous  
*[Signature]*  
Deputy clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

DAVID FAHNRICH and CINDY  
FAHNRICH, a marital community under the  
laws of the State of Washington, and JENEE  
FAHNRICH, an individual,

Plaintiffs,

v.

LINDA WILLIAMS and JOHN DOE  
WILLIAMS, a marital community under the  
laws of the State of Washington, CLIFFORD  
MULLINS and SHELLY MULLINS, a marital  
community under the laws of the State of  
Washington,

Defendants.

Case No. 02-2-04343-1

**VERDICT FORM**

We, the jury, answer the questions submitted by the court as follows:

QUESTION 1: Was there any negligence by defendant Williams that was a proximate cause of  
damage to the plaintiff?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2: With respect to the accident with defendant Williams, was there also negligence  
by plaintiff that was a proximate cause of damage to the plaintiff?

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ANSWER: No (Write "yes" or "no")

QUESTION 3: If your answer to Question 2 was no, do not answer this question. If your answer to Question 2 was yes, assume that 100% represents the total combined fault that proximately caused the plaintiff's damage from the accident with defendant Williams. What percentage of this 100% is attributable to the plaintiff, and what percentage is attributable to the negligence of defendant Williams?

ANSWER:

To Plaintiff: \_\_\_\_\_ %  
To Defendant Williams: \_\_\_\_\_ %  
Total: 100%

QUESTION 4: What do you find to be the plaintiff's amount of damages from the accident with defendant Williams? (Do not consider the issue of contributory negligence, if any, in your answer).

ANSWER:

Economic Damages: \$ 22,500<sup>00</sup>  
Non-Economic Damages: \$ Ø

QUESTION 5: With respect to the accident with defendant Mullins, was the negligence of defendant Mullins a proximate cause of damage to the plaintiff?

ANSWER: Yes (Write "yes" or "no")

QUESTION 6: If your answer to Question 5 was no, do not answer this question. If you answer to Question 5 was yes, what do you find to be the plaintiff's amount of damages from the accident with defendant Mullins?

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ANSWER:

Economic Damages: \$ 2500 <sup>00</sup>/<sub>100</sub>

Non-Economic Damages: \$ 0

*(INSTRUCTION: Sign this verdict form and notify the bailiff.)*

DATE:

August 6, 2007

Sharon R. Bernal  
Presiding Juror