

No. 89902-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RAYMOND GROVE,
Plaintiff/Petitioner,

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Aug 15, 2014, 12:55 pm
BY RONALD R. CARPENTER
CLERK

vs.

PEACEHEALTH ST. JOSEPH HOSPITAL,
Defendant/Respondent.

RECEIVED BY E-MAIL

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

Bryan P. Harnetiaux
WSBA #5169
517 E. 17th Avenue
Spokane, WA 99203
(509) 624-3890
OID #91108

George M. Ahrend
WSBA #25160
16 Basin St. SW
Ephrata, WA 98823
(509) 764-9000

On Behalf of
Washington State Association for Justice Foundation

Filed *E*
Washington State Supreme Court
AUG 25 2014 *byh*
Ronald R. Carpenter
Clerk

ORIGINAL

TABLE OF CONTENTS

	Pages
I. IDENTITY AND INTEREST OF AMICUS CURIAE	1
II. INTRODUCTION AND STATEMENT OF THE CASE	1
III. ISSUES PRESENTED	6
IV. SUMMARY OF ARGUMENT	7
V. ARGUMENT	8
A. On CR 50(b) Review, The Court Need Only Determine Whether There Was Sufficient Evidence For The Jury To Find That One Or More Of PeaceHealth's Physicians Negligently Caused Grove's Injuries.	8
B. To The Extent Relevant, The Court Of Appeals Erred In Concluding That This Court's Teachings In <u>Hansch</u> , Regarding Undifferentiated Verdicts And Vicarious Liability, Are Inapplicable To Claims Under Ch. 7.70 RCW.	12
VI. CONCLUSION	14
APPENDIX	

TABLE OF AUTHORITIES

Cases	Pages
<u>Aluminum Co. of America v. Aetna Cas. & Surety Co.</u> , 140 Wn. 2d 517, 998 P.2d 56 (2000)	9
<u>Ayers v. Johnson & Johnson Baby Products Co.</u> , 117 Wn. 2d 747, 818 P.2d 1337 (1991)	11
<u>Brown v. Vail</u> , 169 Wn. 2d 318, 237 P.3d 263 (2010)	11
<u>Grove v. PeaceHealth St. Joseph Hospital</u> , 177 Wn.App. 370, 312 P.3d 66 (2013), <i>review granted</i> , 180 Wn.2d 1008 (2014)	passim
<u>Hansch v. Hackett</u> , 190 Wash. 97, 66 P.2d 1129 (1937)	passim
<u>Kim v. Dean</u> , 133 Wn. App. 338, 135 P.3d 978 (2006)	10
<u>McCluskey v. Handorff-Sherman</u> , 125 Wn.2d 1, 882 P.2d 157 (1994)	14
<u>Smith v. Leber</u> , 34 Wn. 2d 611, 209 P.2d 297 (1949)	9-10, 13
<u>Washburn v. City of Federal Way</u> , 178 Wn. 2d 732, 310 P.3d 1275 (2013)	10, 13
Constitutional Provisions, Statutes and Rules	
Ch. 7.70 RCW	passim
CR 50	3, 10-11
CR 50(a)	3, 5, 8, 10

CR 50(b)	passim
CR 59	3, 11
RAP 13.7(b)	10
RCW 7.70.040(1)	12
RCW 7.70.020(2) & (3)	12
Washington Constitution Art. I §21	1, 10

Other Authorities

4 Karl B. Tegland, Wash. Prac., Rules Practice (6th ed.)	3
Dan B. Dobbs, et al., <u>The Law of Torts</u> (2d ed.)	11
Anahad O'Connor, "A Team Approach to Patient Care Falters," <u>New York Times</u> , Mar. 8, 2011	11
WPI 2.10	4
WPI 105.01	4
WPI 105.02.01	4
WPI 105.02.02	12
WPI 105.03	4
WPI 105.07	4

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, and has an interest in the rights of persons seeking redress under the civil justice system, including interests in preservation of the right to trial by jury under Washington Constitution Art. I §21, and the proper interpretation and application of Ch. 7.70 RCW, governing claims for medical negligence.

II. INTRODUCTION AND STATEMENT OF THE CASE

This review involves whether the superior court properly vacated a jury verdict for the plaintiff in a medical negligence action for want of sufficient proof to submit the case to the jury. Raymond Grove (Grove) brought this action against PeaceHealth St. Joseph Hospital (PeaceHealth) under Ch. 7.70 RCW, contending PeaceHealth is vicariously liable for medical negligence by one or more of its employees.

The underlying facts are drawn from the Court of Appeals opinion and the briefing of the parties, along with the court's instructions to the jury, completed special verdict form, and post-trial ruling and order granting judgment notwithstanding the verdict (JNOV). See Grove v. PeaceHealth St. Joseph Hospital, 177 Wn.App. 370, 312 P.3d 66 (2013), *review granted*, 180 Wn.2d 1008 (2014); Grove Supp. Br. at 1-11; PeaceHealth Supp. Br. at 1-9; Grove Pet. for Rev. at 1-12; PeaceHealth Ans. to Pet. for Rev. at 1-6; Grove Br. at 1-8; PeaceHealth Br. at 1-11; Grove Reply Br. at 9; CP 323-46 (court's instructions to the jury and special verdict form); CP 347-48 (completed special verdict form); Verbatim Report of Proceedings 10/16/12 (Post-trial Ruling)¹; and CP 740-41 (JNOV order).

For purposes of this amicus curiae brief, the following facts are relevant: Grove underwent aortic root and valve replacement surgery at PeaceHealth, and developed compartment syndrome in his leg during post-operative care at the hospital, resulting in permanent injuries. Grove sued PeaceHealth for vicarious liability under Ch. 7.70 RCW, contending that one or more of its employees were negligent in not properly monitoring for compartment syndrome and, as a consequence, failed to

¹ This verbatim report of proceedings relates to PeaceHealth's post-trial motion to vacate the jury verdict. A copy of this transcript was obtained from Grove's counsel with assurances it is in the record on review.

timely diagnose and treat the condition. At trial before a jury, Grove presented expert testimony that he contends on review supports a finding of negligence and proximate cause by one or more of the three physicians employed by PeaceHealth who provided Grove's post-operative care. This evidence was apparently admitted without objection.

The jury heard evidence at trial regarding PeaceHealth's "team approach" to delivery of health care at the hospital, and apparently Grove's experts commented upon the standard of care required of the three physicians in this context. (As noted below, the parties disagree over the implications of this testimony.)

Apparently, at the conclusion of Grove's case-in-chief, PeaceHealth unsuccessfully brought a CR 50(a) motion to dismiss Grove's claim as a matter of law, for want of sufficient evidence to go to the jury. See Post-trial Ruling at 15 (alluding to prior motion and decision).²

At the completion of the case, the jury was instructed on liability, causation, and burden of proof based on what seem to be standard medical negligence jury instructions. See CP 329-38; see also Grove Pet. for Rev.

² WSAJ Foundation understands that the motion to dismiss at the end of Grove's case-in-chief is not of record on appeal. The Foundation assumes the motion was governed by CR 50(a), just as it assumes the successful post-trial motion was governed by CR 50(b). See generally 4 Karl B. Tegland, Wash. Prac., Rules Practice, CR 50 & CR 59 (6th ed.). The full text of the current version of CR 50 is reproduced in the Appendix to this brief.

at 1; PeaceHealth Ans. to Pet for Rev. at 1, 3-4.³ PeaceHealth did not except to any of these instructions. See Grove Pet. for Rev. at 1.

The jury also was provided with and completed a "Special Verdict Form" (CP 345-46), which required it to determine whether PeaceHealth was negligent, whether any such negligence was a proximate cause of Grove's injuries, and, if applicable, the amount of damages. This form, to which PeaceHealth took no exception, did not require the jury to identify which PeaceHealth employee(s) acted negligently and proximately caused Grove's injuries. The jury concluded that PeaceHealth was negligent, that its negligence was a proximate cause of Grove's injuries, and that Grove sustained damages in the amount of \$583,000.⁴

The trial court granted PeaceHealth's post-trial motion to vacate the jury's verdict on the basis that Grove's theory of team liability was invalid, and that he otherwise failed to present sufficient evidence of negligence and causation on the part of any particular PeaceHealth

³ PeaceHealth states "[t]he jury was given pattern standard of care and malpractice burden of proof instructions." PeaceHealth Ans. to Pet. for Rev. at 1. This appears to be true in most respects. Compare Court Instr. #5 (CP 331) with WPI 105.02.01; Court Instr. #6 (CP 332) with WPI 105.03; Court Instr. #8 (CP 334) with WPI 105.07; Court Instr. #12 (CP 338) with WPI 2.10. Court Instr. #3 (CP 329) on standard of care does not include the fourth paragraph of WPI 105.01, relating to expert testimony regarding standard of care. Court Instr. #5 (CP 331) basically instructed the jury that PeaceHealth is liable for the tortious acts or omissions of its employees.

⁴ A copy of the completed Special Verdict Form, CP 347-48, is reproduced in the Appendix to this brief.

employee(s). See Post-Trial Ruling at 11-17, 22-23⁵; CP 740-41 (JNOV order); Grove, 177 Wn.App. at 380.

Grove appealed to the Court of Appeals, Division I, which affirmed the lower court. As did the trial court, the appellate court held that there is no basis for team liability under Ch. 7.70 RCW, and that Grove did not provide sufficient evidence of breach of the standard of care by a PeaceHealth physician that proximately caused his injuries. See Grove, 177 Wn.App. at 380-87 (re: team liability); see id. at 387-88 (re: individual physician liability).

Grove successfully petitioned this Court for review, urging that there was substantial evidence supporting vicarious liability of PeaceHealth for negligence by one or more of PeaceHealth's physicians involved in providing post-operative care. See Grove Pet. for Rev. at 1-4, 16-17. In opposition to review, PeaceHealth argued that Grove's expert witnesses did not identify a specific PeaceHealth employee who negligently caused Grove's injuries. See PeaceHealth Ans. to Pet. for Rev. at 4. PeaceHealth recounted its argument before the trial court that "the jury must have been confused in finding negligence by the questioning and expert testimony about 'team' care and about Dr. Leone being 'the

⁵ It its post-trial ruling, which appears to be based on CR 50(b), the trial court suggests that it had similar concerns at the time it denied PeaceHealth's motion at the end of Grove's case-in-chief. See Post-Trial Ruling at 15; supra n.2.

captain of the ship." Id. (record citation omitted). PeaceHealth further argued the Court of Appeals correctly affirmed the judgment notwithstanding the verdict because Grove's claim against PeaceHealth "was based on a 'team malpractice' theory advanced without expert medical testimony identifying any team member's violation of a standard of care applicable to him or her, or establishing that any such team member's violation of standard of care applicable to him or her was a 'but for' cause of Mr. Grove's injury." Id. at 7.

In supplemental briefing following the grant of review, both Grove and PeaceHealth now focus on whether there is sufficient evidence in the record from which a jury could conclude that one or more of the physicians providing post-operative care to Grove negligently caused his injuries. See Grove Supp. Br. at 2; PeaceHealth Supp. Br. at 9.

III. ISSUES PRESENTED

1. In determining whether the trial court erred in granting PeaceHealth's CR 50(b) motion, is it necessary for the Court to consider the availability of a "team liability" theory of recovery under Ch. 7.70 RCW?
2. Is the outcome in this appeal governed by the holding in Hansch v. Hackett, 190 Wash. 97, 66 P.2d 1129 (1937), which involves a common law medical negligence claim based upon vicarious liability, and a somewhat similar undifferentiated jury verdict?

IV. SUMMARY OF ARGUMENT

Given the fact that this case comes before the Court under CR 50(b) and does not involve any instructional or evidentiary challenges to a team-based assessment of negligence under Ch. 7.70 RCW, coupled with the fact that the parties have framed the issues on review in terms of individual assessments of negligence, issues related to a team-based assessment of negligence are not before the Court and should not be addressed. Resolution of such issues must await a proper case, and the Court of Appeals' comments on what it characterizes as "Grove's 'team' theory" should be recognized as having no precedential value. Grove, 177 Wn. App. at 383.

Under CR 50(b), the Court should review the superior court's ruling de novo and determine whether there was sufficient evidence to submit the case to the jury based on an individual assessment of the negligence liability of one or more of the surgeons for whose conduct PeaceHealth is vicariously liable.

To the extent relevant, the Court of Appeals erred in concluding that this Court's teachings in Hansch, *supra*, regarding undifferentiated verdicts and vicarious liability, are inapplicable to claims under Ch. 7.70 RCW.

V. ARGUMENT

A. **On CR 50(b) Review, The Court Need Only Determine Whether There Was Sufficient Evidence For The Jury To Find That One Or More Of PeaceHealth's Physicians Negligently Caused Grove's Injuries.**

The trial court denied PeaceHealth's CR 50(a) motion for judgment as a matter of law at the end of Grove's case-in-chief amidst debate over whether a team theory of liability could support a claim under Ch. 7.70 RCW. PeaceHealth also argued that under a more traditional individual assessment of medical negligence liability, Grove had not presented evidence that any one of the three surgeons employed by PeaceHealth negligently caused Grove's injuries.

At completion of the evidence, the trial court instructed the jury, without exception, largely based on pattern jury instructions regarding medical negligence. The instructions did not expressly address the effect of a team approach to a hospital's delivery of medical services. Under these instructions, the jury returned a special verdict form finding PeaceHealth (vicariously) liable. This form did not require the jury to specify which surgeon or surgeons acted negligently and proximately caused Grove's injuries.

Thereafter, on PeaceHealth's post-verdict motion, the trial court vacated the verdict and entered judgment for PeaceHealth as a matter of

law. See CP 740-41. It did so on grounds that team liability is not a valid theory of recovery under Ch. 7.70 RCW, and that otherwise Grove failed to establish sufficient evidence that any physician team member or members negligently caused Grove's injuries. See Post-Trial Ruling at 15-16, 18, 22. On appeal, the Court of Appeals affirmed on similar grounds, specifically rejecting any team-based assessment of negligence under Ch. 7.70 RCW. See Grove, 177 Wn.App. at 380-88.

Now, before this Court, *both* parties limit the inquiry to whether there was sufficient evidence to submit the case to the jury, based on an individual assessment of medical negligence on the part of the surgeons for whose conduct PeaceHealth is vicariously liable.

A motion for judgment as a matter of law under CR 50(b) is reviewed de novo, meaning that no deference is due to the decision of the trial court. See Aluminum Co. of America v. Aetna Cas. & Surety Co., 140 Wn. 2d 517, 529, 998 P.2d 56 (2000). When the CR 50(b) motion is based upon the sufficiency of the evidence, the evidence and all reasonable inferences from the evidence must be viewed in the light most favorable to the nonmoving party. See id., 140 Wn. 2d at 529; see also Smith v. Leber, 34 Wn.2d 611, 615, 209 P.2d 297 (1949) (applying similar standard in reversing trial court JNOV, finding direct and circumstantial evidence favored plaintiff in resolving a “conflict of permissible

inferences”; pre-CR 50 case). This test assures that a court does not impermissibly encroach upon a party’s constitutional right to have the jury determine questions of fact. See Washington Constitution Art. I §21.⁶

In performing its CR 50(b) review of this case, the Court should evaluate the evidence solely under traditional medical negligence analysis, and not reach the issue of the viability of "team liability" under Ch. 7.70 RCW for the following reasons:

First, the Court only accepted review on the sufficiency of the evidence under a traditional medical negligence analysis. See RAP 13.7(b); Grove Pet. for Rev. at 4; PeaceHealth Ans. to Pet. for Rev. at 1, 6-7; Grove Supp. Br. at 2; PeaceHealth Supp. Br. at 9 (heading "A").

Second, implicit in the trial court's and Court of Appeals' analyses of team liability is the conclusion that Grove otherwise presented insufficient evidence under a traditional medical negligence analysis. If this Court determines under CR 50(b) that there was sufficient evidence

⁶ There appears to be some question whether CR 50(b) review is constrained by the law of the case doctrine, based upon the jury instructions and verdict form. Compare Washburn v. City of Federal Way, 178 Wn. 2d 732, 749 n.5, 310 P.3d 1275 (2013) (stating “[j]udgment as a matter of law sought with a *CR 50(a)* motion is governed by the applicable substantive law, not the trial court’s instructions to the jury,” citing Kim v. Dean, 133 Wn. App. 338, 349, 135 P.3d 978 (2006), which appears to involve a CR 50(b) motion; emphasis added), with Smith v. Leber, 34 Wn. 2d at 619 (pre-rule case indicating unobjected to instructions are law of the case on motion for JNOV). In any event, the jury instructions in this case appear to reflect the applicable substantive law. The implications of the special verdict form the jury completed are discussed in §B, infra.

under a traditional analysis to allow the case to go to a jury, then this would seem to end the inquiry, with the verdict reinstated.⁷

Third, should the Court find the evidence insufficient under a traditional individual assessment of negligence, as indicated above, the issue of team liability is not preserved for review. Any discussion of a team-based assessment of negligence under Ch. 7.70 RCW would be unnecessary and constitute an advisory opinion. See *Brown v. Vail*, 169 Wn. 2d 318, 334, 237 P.3d 263 (2010) (noting advisory opinions are disfavored and issued only in rare circumstances).⁸

⁷ CR 50(b) analysis asks whether there was sufficient evidence to send the case to the jury. It does not focus on whether the jury's subsequent verdict is based on the same evidence that the court finds to be sufficient, and, of course, the jury's actual reasoning in reaching its decision inheres in the verdict. See *Ayers v. Johnson & Johnson Baby Products Co.*, 117 Wn. 2d 747, 768-69, 818 P.2d 1337 (1991) (regarding jury's mental processes inhering in the verdict). PeaceHealth does not appear to challenge the jury verdict, other than to say that the jury must have been confused by the expert testimony bearing on the team approach to medical services, and that the holding in *Hansch*, supra, regarding an undifferentiated verdict and vicarious liability, does not apply to a claim under Ch. 7.70 RCW. See e.g. PeaceHealth Ans. to Pet. for Rev. at 4, 8-10. The claim of jury confusion inheres in the verdict; the *Hansch* issue is addressed in §B, infra. While CR 50(b) review may be accompanied by a CR 59 new trial request, and a CR 50 disposition may include granting a new trial, PeaceHealth does not seek this alternate relief from this Court.

⁸ Given the increasing prevalence of team-based health care, it seems likely that at some point the Court will have to address the impact of this change in the provision of health care on liability under Ch. 7.70 RCW. See Dan B. Dobbs, et al., *The Law of Torts*, § 285 (2d ed.) (noting under "contemporary ways of delivering health care [t]he hospital patient may be treated by whole teams of health care providers, or may be handed off from one to another, raising questions about the duties of each"; ellipses & brackets added); see also Anahad O'Connor, "A Team Approach to Patient Care Falts," *New York Times*, Mar. 8, 2011 (available at www.nytimes.com; viewed Aug. 13, 2014) (noting transition to team-based health care and problems with implementation). However, this issue should be addressed in a proper case where it is framed in concrete terms regarding the admissibility or sufficiency of expert testimony and/or the validity of jury instructions, given or proposed. (footnote continued on next page)

B. To The Extent Relevant, The Court Of Appeals Erred In Concluding That This Court's Teachings In Hansch, Regarding Undifferentiated Verdicts And Vicarious Liability, Are Inapplicable To Claims Under Ch. 7.70 RCW.

In Hansch, this Court upheld a partly undifferentiated verdict based upon vicarious liability of a corporate defendant, even though a named defendant employee of the vicariously liable defendant was exonerated by the jury. The Court concluded there was a sufficient basis in the record from which the jury could have found that other employees of the corporate defendant were negligent. See Hansch, 190 Wash. at 98-102.

Both PeaceHealth's and the Court of Appeals' conclusion that Hansch is inapplicable here is tied to discussion of a team-based assessment of liability under Ch. 7.70 RCW. See PeaceHealth Ans. to Pet. for Rev. at 9; Grove, 177 Wn.App. at 386. As indicated in §A, the issue of team liability is not before this Court. Further, CR 50(b) review arguably

If the Court does not address the team liability issue, it should make clear that the Court of Appeals' commentary on the subject should not be viewed as precedential. The reasoning of the Court of Appeals below is based on references to "[t]he [singular] health care provider" and the health care provider's "profession or class" in RCW 7.70.040(1), see Grove, 177 Wn. App. at 383, without regard for the fact that the definition of health care provider includes the provision of health care through employment and other agency relationships, see RCW 7.70.020(2) & (3). Among other things, this reasoning raises troubling questions regarding the diffusion of responsibility that occurs when health care is provided by a team rather than an individual, including whether a health care provider with a relatively higher standard of care, such as a physician, can avoid his or her obligation to comply with the standard of care by delegating tasks to another health care provider with a relatively lower standard of care, such as a nurse.

Other potential approaches to liability in the team-based health care context, such as the doctrine of corporate negligence, are not presented in this review. See WPI 105.02.02.

focuses on sufficiency of the evidence under the governing substantive law rather than the jury instructions and verdict form. See Washburn, 178 Wn.2d at 749, n.5; see also supra n.6. If so, in the absence of any issue on review challenging the instructions and verdict form, it appears unnecessary for the Court to address whether the principles announced in Hansch apply in this context.

If the Court does reach this issue, the analysis of Hansch applies equally here. In each instance the jury finds a defendant liable based on vicarious liability under instructions which allow a finding of negligence by one or more employees of the defendant. See Hansch, 190 Wash. at 102. The analysis in Hansch is unaffected by the adoption of Ch. 7.70 RCW. Well-established principles for interpreting an undifferentiated verdict are simply being applied in a specific context, i.e., against a defendant who is potentially subject to vicarious liability for multiple employees or agents.

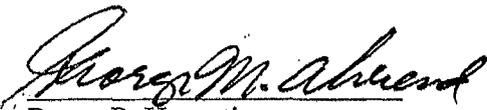
Moreover, to the extent CR 50(b) permits consideration of the actual verdict form, see Smith v. Leber, 34 Wn. 2d at 619, it is noteworthy that there is no indication in the briefing that PeaceHealth proposed a verdict form that would have required the jury to identify the employee(s) who acted negligently and for whose conduct PeaceHealth was held vicariously liable. See CR 49(a)-(b) (regarding verdict form options).

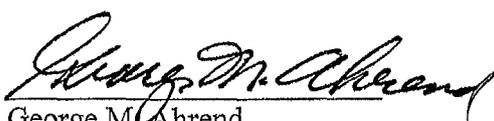
Under this analysis, PeaceHealth should not be able to challenge use of the undifferentiated verdict form. Cf. McCluskey v. Handorff-Sherman, 125 Wn.2d 1, 10-11, 882 P.2d 157 (1994) (declining to “dissect” undifferentiated jury verdict based on alternative theories of liability, where one of the theories was properly submitted to the jury).

VI. CONCLUSION

The Court should take into account the legal argument set forth in this brief in the course of resolving this appeal.

DATED this 15th day of August, 2014.


for Bryan P. Harnetiaux
with authority


George M. Ahrend
On Behalf of WSAJ Foundation

APPENDIX

SCANNED

Hon. Steven J. Mura

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

RAYMOND GROVE,

Plaintiff,

vs.

ST. JOSEPH HOSPITAL, ST. JOSEPH
HOSPITAL FOUNDATION, PEACEHEALTH,

Defendant.

No. 09-2-03393-1

*Reached
at 3:38 PM*

SPECIAL VERDICT FORM

FILED IN OPEN COURT
6/28 2012
WHATCOM COUNTY CLERK

By *UJ*
Deputy

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

QUESTION 1: Was the defendant negligent?

ANSWER:

Yes No

(INSTRUCTION: If you answered "no" to Question 1, date and sign at the end of this verdict form, and return it to the bailiff. If you answered "yes" to Question 1, answer Question 2.)

QUESTION 2: Was the negligence a proximate cause of injury to the plaintiff Mr. Grove?

ANSWER:

Yes No

(INSTRUCTION: If you answered "no" to Question 2, date and sign at the end of this verdict form and return it to the bailiff. If you answered "yes" to Question 2, answer Question 3)

QUESTION 3: What do you find to be Mr. Grove's amount of damages?

ANSWER:

Economic damages: \$ 383,000.00

Non-economic damages: \$ 200,000.00

94

DATE: June 28, 2012

Steven A. Chilli
Presiding Juror

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Civil Rules (Cr)
6. Trials (Rules 38-53.4)

Superior Court Civil Rules, CR 50

RULE 50. JUDGMENT AS A MATTER OF LAW IN JURY TRIALS;
ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS

Currentness

(a) Judgment as a Matter of Law.

(1) *Nature and Effect of Motion.* If, during a trial by jury, a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against the party on any claim, counterclaim, cross claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment. A motion for judgment as a matter of law which is not granted is not a waiver of trial by jury even though all parties to the action have moved for judgment as a matter of law.

(2) *When Made.* A motion for judgment as a matter of law may be made at any time before submission of the case to the jury.

(b) **Renewing Motion for Judgment After Trial; Alternative Motion for New Trial.** If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment--and may alternatively request a new trial or join a motion for a new trial under rule 59. In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand.

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned;

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.

(c) **Alternative Motions for Judgment as a Matter of Law or for a New Trial--Effect of Appeal.** Whenever a motion for a judgment as a matter of law and, in the alternative, for a new trial shall be filed and submitted in any superior court in any civil cause tried before a jury, and such superior court shall enter an order granting such motion for judgment as a matter of law, such court shall at the same time, in the alternative, pass upon and decide in the same order such motion for a new trial; such ruling upon said motion for a new trial not to become effective unless and until the order granting the motion for judgment as a matter of law shall thereafter be reversed, vacated, or set aside in the manner provided by law. An appeal to the Supreme Court or Court of Appeals from a judgment granted on a motion for judgment as a matter of law shall, of itself, without the necessity of cross appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the appellate court shall, if it reverses the judgment entered as a matter of law, review and determine the validity of the ruling on the motion for a new trial.

(d) **Same: Denial of Motion for Judgment as a Matter of Law.** If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Credits

[Amended effective January 1, 1977; July 1, 1980; September 1, 1984; September 17, 1993; September 1, 2005.]

Notes of Decisions (111)

CR 50, WA R SUPER CT CIV CR 50

Current with amendments received through 5/1/14

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

OFFICE RECEPTIONIST, CLERK

To: George Ahrend
Cc: Bryan P Harnetiaux; Benjamin Gould; Ian Birk; Spillane, Mary; Stewart A. Estes
Subject: RE: Grove v. PeaceHealth, SC #89902-9

Rec'd 8/15/2014

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: George Ahrend [mailto:gahrend@trialappeallaw.com]
Sent: Friday, August 15, 2014 12:45 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Bryan P Harnetiaux; Benjamin Gould; Ian Birk; Spillane, Mary; Stewart A. Estes
Subject: Grove v. PeaceHealth, SC #89902-9

Dear Mr. Carpenter,

On behalf of the Washington State Association for Justice Foundation, a letter application to appear as amicus curiae and proposed amicus curiae brief are attached to this email for filing in the above-referenced case. Counsel for the parties are being served simultaneously by copy of this email, per prior arrangement.

Respectfully submitted,

--

George Ahrend
Ahrend Albrecht PLLC
16 Basin St. SW
Ephrata WA 98823
Office (509) 764-9000
Fax (509) 464-6290
Cell (509) 237-1339



This email is confidential. If you are not the intended recipient, please notify the sender and delete it from your system. Thank you.