

## CASE NOTE:

### Oregon Supreme Court Affirms Jury Verdict Despite the "Same Nine" Jurors' Disagreement on the Specific Amounts of Economic and Noneconomic Damages

By Chris Parker, Associate

In *Kennedy v. Wheeler*, 356 Or 518, \_\_\_ P3d \_\_\_ (2014), the plaintiff was injured when the defendant drove through a stop sign and collided with the car in which plaintiff was riding as a passenger. Defendant admitted liability for the accident, and the damages case was tried to a jury. *Id.* at 520. All twelve jurors unanimously agreed that the defendant's negligence was a cause of damage to the plaintiff. Ten jurors agreed to award the plaintiff \$65,386 in economic damages, and nine jurors agreed to award the plaintiff \$300,000 in noneconomic damages. However, only the same eight jurors agreed on these specific amounts of economic and noneconomic damages.<sup>1</sup> The defendant objected to the verdict, arguing that Oregon law requires at least the same nine jurors to agree on the specific amounts of economic and noneconomic damages. The trial court received the verdict over defendant's objection. *Id.* at 521-22.

The Court of Appeals reversed, holding the verdict was invalid because the trial court had instructed the jury that at least the same nine jurors must agree on every answer on the verdict form, which became the "law of the case." The Court of Appeals therefore held that the same nine jurors were required to agree on the specific amounts of economic and noneconomic damages. *Id.* at 523-24.

On review, the Supreme Court reversed the Court of Appeals' decision and reinstated the trial court's judgment. The Supreme Court rejected the argument that the trial judge's instruction became the "law of the case." The *Kennedy* Court clarified that the "law of the case" doctrine is best reserved for the situation where a party improperly attempts to relitigate an appellate decision after the case has been remanded to the trial court. *Id.* at 531.

On the merits, the Supreme Court held that Oregon law requires only that: (1) nine of the twelve jurors agree on all questions that form a basis for the trial court's judgment; and (2) the votes of the jurors on those questions be logically consistent. *Id.* at 537. Since all twelve jurors agreed that the plaintiff should be awarded damages, and at least nine jurors agreed on each specific type of damages, the verdict was adequately supported, regardless of whether the same nine agreed on the specific amounts of damages. The decision of the Court of Appeals was reversed, and the trial court's judgment affirmed. *Id.* at 542.

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<sup>1</sup>Below is a chart outlining the votes of the twelve jurors on economic and noneconomic damages.

Juror No.	Agree on Economic Damages?	Agree on Noneconomic Damages?	Agree on Both Types of Damages?
1	No	Yes	No
2	Yes	No	No
3	No	No	No
4	Yes	Yes	Yes
5	Yes	Yes	Yes
6	Yes	Yes	Yes
7	Yes	Yes	Yes
8	Yes	Yes	Yes
9	Yes	Yes	Yes
10	Yes	Yes	Yes
11	Yes	Yes	Yes
12	Yes	No	No
Total	10	9	8