

HONORABLE STEVE ROSEN

FILED
KING COUNTY, WASHINGTON

JAN 16 2018

SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

THERESA BIGLER, individually and as
Personal Representative of the Estate of
Richard Bigler,

Plaintiffs,

v.

OLYMPUS AMERICA, INC., a foreign
corporation; OLYMPUS CORPORATION
OF THE AMERICAS, a foreign
corporation; OLYMPUS MEDICAL
SYSTEMS CORP., a foreign corporation;
and VIRGINIA MASON MEDICAL
CENTER, a Washington corporation,

Defendants.

NO. 15-2-05472-4 SEA

ORDER RE PLAINTIFFS' MOTION RE
SANCTIONS, NEW TRIAL AND
JUDGMENT AS A MATTER OF LAW

Clerk's Action Required

THIS MATTER having come before the Court on Plaintiffs' Motion under CR 26, 37, 50 and 59 for New Trial for Discovery Violations and Lack of Substantial Justice; and for Judgment as a Matter of Law to Reconcile an Inconsistent Verdict Against the Olympus Defendants, or New Trial; and the Court having considered the pre-trial, trial, and post-trial files and arguments, it is hereby ORDERED:

1. Plaintiffs' Motion for a New Trial is GRANTED;
2. Plaintiffs' Motion for Discovery Sanctions against Olympus is GRANTED.

ORDER GRANTING PLAINTIFFS' MOTION FOR
SANCTIONS AND NEW TRIAL - 1

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1 The Court finds that the factors warranting the sanction of a new trial under *Burnet v.*
2 *Spokane Ambulance*, 131 Wn.2d 484 (1997) are met.

3 a. The Court finds that the Olympus defendants violated the discovery rules, and that
4 the discovery violations of the Olympus defendants were willful under case law. Trans. 121. The
5 reasons for these findings are set out in the transcript of the November 2, 2017, which are
6 incorporated herein.

7 b. The Court finds that the discovery violations of the Olympus defendants
8 substantially prejudiced the ability of plaintiffs to prepare for trial. Trans. 120. The reasons for
9 this finding are set out in the transcript of the November 2, 2017, which are incorporated herein.

10 c. The Court finds that after considering other possible sanctions, the least severe
11 sanctions which are adequate to address the Olympus defendants' discovery violations is to grant
12 a new trial to plaintiffs [Trans. 121], impose \$250,000.00 in sanctions, and order the Olympus
13 attorneys to present a CLE on proper discovery (see Order Granting VM's Motion for Sanctions
14 and New Trial and Ruling on Various Motions filed concurrently with this Order). The reasons
15 for these findings, including the insufficiency of lesser sanctions to remedy the discovery
16 violations, are set out in the transcript of the November 2, 2017, which are incorporated herein.

17 3. Plaintiffs Motion for New Trial under CR 59 due to lack of Substantial Justice is
18 GRANTED based on the above and incorporated findings.

19 4. Plaintiffs' Motion for Judgment as a Matter of Law under CR 50 as to the WPLA
20 failure to warn post-manufacture verdict is DENIED, or in the alternative for a New Trial under
21 CR 59 based on an irreconcilable inconsistency in that verdict between Plaintiffs and Virginia
22 Mason's WPLA claims is DENIED.

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24 ORDER GRANTING PLAINTIFFS' MOTION FOR
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1 IT IS FURTHER ORDERED:

- 2 1. Plaintiffs are entitled to a new trial on liability under plaintiffs' WPLA, CPA and
3 punitive damage claims;
- 4 2. Olympus is entitled to discovery related to Plaintiffs' reinstated CPA claim;
- 5 3. Plaintiffs' personal injury compensatory damages under the WPLA are fixed at \$1
6 million as found by the jury. Plaintiffs are entitled to seek additional damages in
7 a new trial under plaintiffs' CPA and punitive damages claims;
- 8 4. Plaintiffs are entitled to pursue additional discovery regarding the WPLA, CPA
9 and punitive damage claims;
- 10 5. Olympus must have an attorney licensed in Washington state in charge of and
11 involved in all material aspects of the discovery process for Olympus as set out in
12 the November 2, 2017 transcript;
- 13 6. Olympus is ordered to pay plaintiffs Two Hundred and Fifty Thousand Dollars
14 (\$250,000) in sanctions for the discovery violations within 30 days of the date of
15 this order;
- 16 7. Plaintiffs are awarded all of their attorney fees and expenses for the retrial of this
17 action;
- 18 8. Plaintiffs are entitled to the costs for translation of all documents identified in
19 Olympus' response to interrogatories.
- 20 9. Further terms as requested by plaintiffs are reserved pending compliance with
21 the above.
- 22 10. All of the Court's oral rulings are incorporated by reference.
- 23 11. The discovery plans submitted by the parties are adopted by the Court, except
24 that any proposed schedules are NOT adopted. Unless an appeal is accepted by

ORDER GRANTING PLAINTIFFS' MOTION FOR
SANCTIONS AND NEW TRIAL - 3

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1 an appellate court, this Court and the parties shall convene a conference
2 approximately three months from the date of this order to discuss the progress of
3 discovery and a trial date.

4 12. All of the Court's oral rulings are incorporated by reference.

5 DATED: 1/16/18

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HONORABLE STEVE ROSEN

7 Presented by:

8 LUVERA LAW FIRM

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ORDER GRANTING PLAINTIFFS' MOTION FOR
SANCTIONS AND NEW TRIAL - 4

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