

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

McKENZIE-WILLAMETTE HOSPITAL, an
Oregon nonprofit corporation,

Plaintiff,

Civil No. 02-6032-HA

v.

OPINION AND ORDER

PEACEHEALTH , a Washington State
nonprofit corporation,

Defendant.

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Becky A. Johnson
Kelly Terrill Hagan
William B. Crow
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HAGGERTY, Chief Judge:

A jury returned a special verdict in this action on October 31, 2003. After three days of deliberations the jury concluded in part that plaintiff MacKenzie Willamette proved a relevant product and geographic market, and that defendant PeaceHealth did not enter into an

unlawful exclusive dealing agreement, did not monopolize the provision of health care and did not harm market-wide competition in the relevant market, and did not enter into a conspiracy to monopolize.

The jury also concluded, however, that defendant attempted to monopolize the provision of health care and harmed market-wide competition in the relevant market, unlawfully discriminated in price of services, and unlawfully interfered with plaintiff's prospective relations with others. The jury determined that plaintiff was entitled to a damages award of \$5.4 million for each of these three claims, as well as punitive damages of \$9.2 million as a result of defendant's interference with plaintiff's prospective relations with others.

Subsequent to the return of this verdict, defendant moved for a new trial. Rule 59 of the Federal Rules of Civil Procedure allows a trial court, in its discretion, to grant a new trial "on all or part of the issues in an action where there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States" Fed. R. Civ. P. 59(a)(1). Motions for new trials should be granted judiciously, because ordering a new trial "effects a denigration of the jury system and to the extent that new trials are granted the judge takes over, if he [or she] does not usurp, the prime function of the jury as the trier of the facts." *Lind v. Schenley Indus., Inc.*, 278 F.2d 79, 90 (3d Cir. 1960) (en banc). The Ninth Circuit has stated that a court may grant a new trial "if the verdict is contrary to the clear weight of the evidence, or is based upon evidence which is false, or to prevent, in the sound discretion of the trial court, a miscarriage of justice." *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 819 (9th Cir. 2001) (quoting *U.S. v. 40 Acres of Land*, 175 F.3d 1133, 1137 (9th Cir. 1999)).

BACKGROUND

There is little need to present more than a brief summary of this thoroughly litigated action. Plaintiff McKenzie-Willamette Hospital is a 114-bed community hospital in Springfield, Oregon. Defendant PeaceHealth is a nonprofit healthcare organization headquartered in Bellevue, Washington. Defendant operates hospitals in Lane County that compete with plaintiff by providing general acute hospital care. After the trial and the jury's determination that defendant attempted to monopolize the provision of health care and harmed market-wide competition in the relevant market, unlawfully discriminated in price of services, and unlawfully interfered with plaintiff's prospective relations with others, defendant moved for a new trial, citing four general grounds for granting the motion:

- plaintiff Mackenzie was permitted to amend claims without providing sufficient notice to defendant;
- certain evidence was improperly admitted or excluded;
- erroneous jury instructions were issued; and
- the damage awards from the jury were unsupported.

These grounds are reviewed in turn, below.

1. **AMENDMENT OF CLAIMS**

Defendant first complains that plaintiff was allowed to (1) add "discount bundling" as a claim under monopolization and attempt to monopolize claims; and (2) add Weyerhaeuser, Monaco Coach and several physicians as entities involved in the claim for interference with prospective economic advantage that previously identified only Regence.

Bundling Claim

