

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

R.K.,  
  
Plaintiff,  
  
v.  
  
THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF JESUS  
CHRIST OF LATTER DAY SAINTS,  
  
Defendant.

CASE NO. C04-2338RSM  
  
ORDER DENYING MOTION TO  
CERTIFY

This matter comes before the Court on plaintiff's Motion to Certify Question to the Washington Supreme Court. (Dkt. #228). Specifically, plaintiff argues that the Washington Supreme Court should provide additional guidance on the breadth and application of *Tegman v. Accident & Medical Investigations*, 150 Wn.2d 102 (2002) to the instant action. Defendant opposes the motion, arguing that it is not necessary to ascertain answers to plaintiff's questions in order to dispose of this case, and that the law governing damages in this case is clearly established. (Dkt. #236).

Having reviewed plaintiff's motion, defendant's opposition, plaintiff's reply, and the remainder of the record, the Court hereby ORDERS:

(1) Plaintiff's Motion to Certify (Dkt. #228) is DENIED. Washington State allows a

1 federal court to certify questions of law to the Washington Supreme Court when, in the federal  
2 court's opinion, "it is necessary to ascertain the local law of this state in order to dispose of such  
3 proceeding and the local law has not been clearly determined." RCW. 2.60.020. The Court agrees  
4 with defendant that neither of these factors is present here.

5 First, the Court has already disposed of this proceeding. A trial has been held, the jury  
6 found in favor of plaintiff, and the jury was able to determine the amount of damages it felt  
7 appropriate to award to plaintiff. Plaintiff has not pointed to anything specifically demonstrating  
8 that the jury was "wholly confused by the *Tegman* instruction." (See Dkt. #228 at 3). Indeed, as  
9 demonstrated by the math calculations written in the margin of the Special Verdict Form, it appears  
10 that the jury understood exactly what it was instructed to do. (See Dkt. #220 at 3).

11 Second, the Court agrees that local law has been clearly determined by the Washington  
12 Supreme Court. In this motion, plaintiff essentially reargues its previous position that *Tegman* does  
13 not apply to this action and that damages should not have been segregated. The Court previously  
14 rejected plaintiff's arguments, and found that *Tegman* applied and damages should be segregated.  
15 (Dkt. #153). While plaintiff may disagree with the way *Tegman* was decided, he has not persuaded,  
16 and does not now persuade, this Court that *Tegman* should not have been applied to his case.

17 This Court does not dispute that state courts throughout Washington appear to be  
18 struggling with the *Tegman* issue. However, the Court feels that, here, plaintiff can challenge the  
19 Court's previous determination through normal appellate procedures. Accordingly, the Court  
20 denies plaintiff's motion to certify his *Tegman* questions to the Washington Supreme Court.

21 (2) The Clerk shall forward a copy of this Order to all counsel of record.

22 DATED this 21 day of November, 2006.

23 

24 RICARDO S. MARTINEZ  
25 UNITED STATES DISTRICT JUDGE  
26