

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 12, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1151

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**FRANKIE B. HALL and
TRANSPORTATION INSURANCE CO.,**

Plaintiffs-Respondents,

v.

**AMERICAN ALLIANCE INSURANCE CO. and
PETROLEUM EQUIPMENT, INC.,**

Defendants-Appellants,

ABC INSURANCE CO.,

Defendant.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS P. DOHERTY, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. American Alliance Insurance Co., and its insured, Petroleum Equipment, Inc., appeal from a judgment entered on a jury verdict in

favor of Frankie B. Hall. American claims that the trial court erred because it did not instruct the jury to reduce the damage award for future loss of earning capacity and future medical expenses to present value. Because the trial court did not erroneously exercise its discretion in instructing the jury, we affirm.

I. BACKGROUND

This case arises out of a personal injury action brought by Hall. On April 30, 1990, Hall, while walking on a sidewalk, slipped and fell, which resulted in a fractured ankle. Petroleum Equipment was excavating a subterranean tank near the site of the fall. Hall sued Petroleum Equipment and its insurer, American, alleging negligence. At trial, the jury found Petroleum Equipment to be 59% causally negligent and found Hall to be 41% causally negligent.

Hall's treating physician, Dr. Charles Klein, provided expert testimony on the issue of future medical expenses. Vocational expert Daniel C. Kuemmel offered testimony on the issue of loss of future earning capacity. At the jury instruction conference, American requested that the jury be instructed on reducing future damage awards to present value. The trial court declined to instruct the jury on reduction of future damage awards to present value because American did not introduce any evidence regarding calculating present value. The jury awarded future medical expenses of \$10,000, and loss of future earnings in the amount of \$65,000.

American filed a post-verdict motion for a new trial on the trial court's failure to charge the jury with the present value instruction. The trial court denied the motion, ruling that the instruction was not warranted because American failed to introduce any evidence to support the present value instruction. Judgment was entered on the verdict. American now appeals.

II. DISCUSSION

The trial court has wide discretion in instructing a jury. *Meurer v. ITT Gen. Controls*, 90 Wis.2d 438, 448, 280 N.W.2d 156, 162 (1979). We will not

find an erroneous exercise of that discretion if the trial court applied the proper law to the relevant facts to reach a rational conclusion. *Village of Shorewood v. Steinberg*, 174 Wis.2d 191, 204, 496 N.W.2d 57, 62 (1993).

The jury instruction on reducing future losses to present value, requested by American, provides:

A lump sum of money received today may be worth more than the same sum paid in installments over a period of months or years. This is because a sum received today can be invested and earn money at current interest rates. By making a reduction for the earning power of money, your answer will reflect the present value in dollars of an award of future damages.

WIS J I—CIVIL 1796. American claims that the trial court is required to give this instruction whenever a party requests it. The trial court disagreed, reasoning that the instruction can only be given when the jury has been provided with evidence to assist it in reducing future values to present worth. We agree.

The defendant has the burden of producing evidence to show the fact-finder how to reduce future losses to present value. *Wingad v. John Deere & Co.*, 187 Wis.2d 441, 452, 523 N.W.2d 274, 279 (Ct. App. 1994). This court held in *Wingad* that reducing future damages to present value prevents overcompensating plaintiffs, but “[f]airness dictates ... that a defendant entitled to the present value instruction should have the burden of presenting evidence to reap the benefit of the instruction.” *Id.* at 453, 523 N.W.2d at 279. To meet this burden, a defendant may provide expert testimony or standard interest and annuity tables to assist the trier of fact in calculating present value. *Id.* American failed to introduce any evidence to satisfy this burden and, therefore, there was no basis in the record for giving this instruction. Accordingly, the trial court did not erroneously exercise its discretion in refusing to charge the jury with the present value instruction.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.