

## Nebraska Supreme Court Weighs in on Tax Implications of Jury Verdicts

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The Nebraska Supreme Court issued a decision in *Heckman v. Burlington Northern Santa Fe Railway Co.*, No. S-12-335, --N.W.2d--(Aug. 16, 2013), determining that a general verdict award in favor of an employee for on-the-job injuries is an award of compensation that required the employer to treat the entire verdict as wages for purposes of tax withholding. In *Heckman*, the plaintiff, an employee of defendant Burlington Northern Santa Fe Railway (BNSF), was injured on the job and filed a claim for personal injury pursuant to the Federal Employees' Liability Act (FELA), seeking, inter alia, lost earnings and benefits. The court instructed the jury to consider awarding plaintiff damages to compensate for his injury, including lost wages, and neither party requested a special verdict instruction. The jury returned a general verdict for plaintiff, but did not specify how it attributed damages. BSNF paid the judgment, but withheld plaintiff's share of, what it asserted, were the applicable taxes and then filed a motion for satisfaction and discharge of the judgment. The plaintiff opposed the motion, arguing that BNSF was not required to withhold any taxes (but did not dispute the accuracy of the computations). The district court agreed and ordered the parties to agree in writing that no portion of the award would be considered lost wages. BSNF appealed.

The Court reversed, determining that the general verdict for the employee is an award of compensation from which the employer BSNF is required to withhold a portion of the award to pay the applicable payroll taxes. The Court held that although employees and employers can negotiate settlement agreements and allocate portions of the settlement award to particular categories, the parties in this case did not do so. The Court held that, in this case, once the jury returned a general verdict based, in part, on the employee's claim of lost wages, federal law controlled allocation of the award to lost wages, citing 45 U.S.C. 231(h)(2). And, the Court held, when a jury returns a general verdict based at least in part on time lost from work, the entire award is considered compensation and is subject to taxation. The Court also determined that once such a verdict has been entered, courts do not have authority to force parties to agree to change the basis of the verdict, and the district court's order requiring the parties to agree that no portion of the award could be considered lost wages was erroneous.

This opinion is helpful in that it reaffirms the parties' ability to allocate wage vs. non-wage compensation through settlement. The take-away from the opinion is that an employer should request a special verdict form to require the jury to allocate the damages. Further, a more functional solution would be to negotiate a settlement post-judgment that would allocate the tax burdens by agreement.

ATTORNEYS

[Joshua C. Dickinson](#)

[Shilee T. Mullin](#)

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