



LEGAL UPDATE | Implications of the *Henderson* Ruling: WA Supreme Court Addresses Racial Bias in Civil Court Proceedings

Introduction

On October 20, 2022, the Supreme Court of the State of Washington handed down a landmark decision that aims to address the issue of racial bias in civil court proceedings. The decision, *Henderson v. Thompson*, expands upon a similar ruling from the Court which applied to criminal court proceedings (See: *State v. Zamora*).

What's new about the *Henderson* decision?

Before this ruling, Washington court rules maintained that it was the responsibility of the *accusing party* to prove that racial bias influenced civil court proceedings or jury verdicts. By contrast, the *Henderson* decision concludes that when a party to a civil litigation proceeding accuses another party of bias, it is the responsibility of the *accused party* to prove that there was no such bias. This is a significant change because it shifts the burden from “prove the result was racially motivated” to “prove it wasn’t”.

Background on the *Henderson v. Thompson* case

How did it start? In this case, Janelle Henderson, a Black woman, and Alicia Thompson, a white woman, were involved in a motor vehicle collision. Thompson admitted fault for the collision but made no offer to compensate Henderson for her injuries. Henderson claimed that her preexisting condition was seriously exacerbated by the collision and sued for damages.

What happened in trial? During the trial, Thomson’s defense team attacked the credibility of Henderson and her counsel – also a Black woman – in language that called on racist tropes and suggested impropriety between Henderson and her Black witnesses.

What did the jury decide? The jury returned a verdict of only \$9,200 for Henderson.

How did Henderson respond? Henderson moved for a new trial or *additur* (defined as an increase by the court of the jury's award of damages which the court deems insufficient) on the ground that the repeated appeals to racial bias affected the verdict.

How did the trial court respond to Henderson’s motion? The trial court did not even grant an evidentiary hearing on that motion. The court instead stated it could not “require attorneys to refrain from using language that is tied to the evidence in the case, even if in some contexts the language has racial overtones.”

What are the key elements of the WA Supreme Court's ruling in *Henderson*?

The Washington State Supreme Court ruled that Henderson had appropriately invoked CR 59(a) (9), which holds that a verdict affected by racial bias is incompatible with substantial justice and requires a new trial.

Further, the Court ruled that “[w]hen a civil litigant makes a prima facie showing sufficient to draw an inference of racial bias under this standard, the court must grant an evidentiary hearing to determine if a new trial is warranted” (Emphasis added.) *Henderson*, 19. It also ruled that in determining whether an evidentiary hearing should be granted, neither the accused proponent’s intentions nor the court’s suggestion that there *could* be alternate interpretations of the racially motivated conduct matter in that decision.

Ultimately, the Court ruled that at that hearing, “the trial court is to presume that racial bias affected the verdict, and the party benefiting from the alleged racial bias has the burden to prove it did not.” *Henderson*, 19.

What kinds of "appeals to racial bias" did the Court acknowledge occurred in Henderson's case?

- Thompson’s attorney repeatedly characterized Henderson as “confrontational and “combative” in her testimony. The court acknowledged that these terms “evoke the harmful stereotype of an ‘angry Black woman’.” *Henderson*, 20.
- Thompson’s attorney repeatedly contrasted that characterization of Henderson with Thompson, who she described as “intimidated and emotional”.
- In closing arguments, Thompson’s attorney alluded to racist stereotypes about Black women as untrustworthy and motivated by the desire to acquire an unearned financial windfall. Thompson’s attorney argued that Henderson was exaggerating or fabricating her injuries. The court held that this argument played into negative and false stereotypes about Black women being untrustworthy, lazy, deceptive, and greedy. *Henderson*, 21.
- Thompson’s attorney described the testimony of Henderson’s three Black witnesses as “inherently biased”.
- Thompson’s attorney intimated that the Black witnesses had joined together to lie for the Black plaintiff. *Henderson*, 22.
- Thompson’s attorney suggested that Henderson had an improper relationship with her chiropractor that would make him likely to lie for her. *Henderson*, 22.
- The judge in Henderson’s jury trial said the jury wanted Henderson to leave the courtroom before they would exit the jury room to give their verdict.

If I suspect racial bias is negatively affecting my client's case, what should I do?

Easy: Bring it to the court’s attention. The burden of proof rests with the accused party, who must prove that there was no racial bias.

Conclusion

This ruling was a long time coming. There have been many instances through the years of attorneys appealing to racial bias (and juries sometimes going along with it) without directly coming out and saying so. They have used (like in *Henderson*) certain terminology and made certain accusations which made it difficult for the other party to prove the intent behind them. Now that the burden has shifted, however, it will make it much less likely that appeals to racial bias will happen, and when they do, that they will be brought to light and the offender will be held accountable. This is a victory for not just people of color, but for anyone who stands up for justice in the Washington state court system.

Contributor

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