

CAUSE NO. 64596-0-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

NADEZHDA PANITKOVA, individually and NELLI
PANITKOVA and DENIS PANITKOV, minor
children and herein represented by their natural
parent and legal guardian NADEZHDA PANITKOVA,

Appellants,

v.

PAVEL PANITKOV, individually and KIM KUHNHAUSEN
and "JOHN DOE" KUHNHAUSEN, individually and/or
the marital community composed thereof,

Respondents.

REPLY BRIEF OF APPELLANTS

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SECRETARY OF THE COURT
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Rebuttal Argument

As the Plaintiffs have previously pointed out in their opening brief, the only medical expert who testified at trial was Dr. Alnoor Bhanji, D.C., the owner of the medical facility which treated the plaintiffs for their injuries from the accident. The defendants presented no medical testimony of their own, and hired no expert to testify in opposition to Dr. Bhanji. The defendants in their responsive brief seem to want to rely on the jury's right to disregard the evidence presented. But also as previously pointed out in the plaintiffs' opening brief, *Ide v. Stoltenow*, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955), has taken that argument away from the defendants by ruling that items that are undisputed are beyond legitimate controversy and not subject to disbelief by the jury. *Ide*, p. 851.

Had the defendants hired their own medical expert to refute the testimony of Dr. Bhanji, then the jury would have had the right to determine which of those experts they would believe. But no controverting medical testimony was presented by the defendants, and *Ide, supra*, forecloses the defendants from arguing that the jury can still elect to not believe the only medical expert who testified.

In the case of *Nichols v. Lackie*, 58 Wn.App 904, 795 P.2d 722

(1990), the defendant Lackie was sued by the plaintiff Nichols for injuries caused by a rear-end accident. The plaintiff's medical bills in the amount of \$3,774.97 were admitted without objection. *Nichols, supra, p. 906*. Both the plaintiff's treating physician and surgeon testified that they believed the injuries to the plaintiff occurred as a result of the collision. An exhibit which was submitted to the jury indicates that an earlier fall may have caused the condition. *Nichols, supra, p. 905*. In the present case Dr. Bhanji testified that in his opinion, based on reasonable medical certainty, the accident caused the plaintiffs' injuries, the treatments were necessary, and the charges were reasonable. Defendants argue that the plaintiffs' prior medical records indicate the condition was pre-existing as to the plaintiff Nadezhda Panitkova. The *Nichols* court ruled that a new trial should be granted because the jury awarded less than the actual medical bills which were conclusively established. *Nichols, supra, p. 907*.

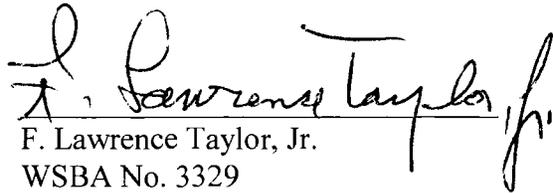
In the present case, the defendants argue that the prior medical records are sufficient to allow the jury to disbelieve Dr. Bhanji. That position is contrary to the law set forth in *Nichols, supra*. It should also be noted that Nadezhda's prior condition was diagnosed as "mild lumbosacral spondylosis" (Trial Exhibit 32, P. 000046, 000075), which is not the

condition treated by Dr. Bhanji. That also does not explain or justify the jury's failure to award uncontested medical specials to the two children.

Conclusion

Under the law contained in the plaintiffs' opening brief and as set forth above, the plaintiffs request this court to order a new trial limited to the amount of damages only.

Respectfully submitted this 14th day of December, 2010.

A handwritten signature in black ink that reads "F. Lawrence Taylor, Jr." with a stylized flourish at the end.

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