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I. INTRODUCTION

Appellant files this brief in response to the arguments raised by the Washington Defense Trial Lawyers (“WDTL”). In essence, WDTL argues, without citation to authority, that “[w]hen a parent commences their own action and omits to include their minor child as a party/plaintiff, an inference naturally arises that the parent has made the deliberate decision to not subject their child to the burdens and stresses of litigation.” Br. at 8. WDTL then claims that this parental election should bind the child. Contrary to this assertion, the claims held by minor children may often conflict with those brought by a parent. Centennial Contractors had the ability to request the appointment of a guardian ad litem for the Blackshear children, but it did not. CR 19. Under the relevant tolling statute, the inaction of the natural parents does not bind the children as this is not a medical malpractice action. RCW 4.16.190. For these reasons, this Court should reject the arguments raised by WDTL.

II. DISCUSSION

WDTL’s chief argument is that the courts should not intrude on what is assumed as a calculated decision to save minor children from the rigors of litigation. This argument ignores the frequent tension between a parent’s claim and that of a child when there are limited resources available and ignores the legislature’s statutory scheme that tolls the

statute of limitations on all claims outside the area of medical malpractice. RCW 4.16.190.

The argument raised by WDTL assumes that the parent is deciding to forgo a claim by the child for the child's best interest. Often, however, the decision may be singularly calculated to protect the interests of the parent. For instance, in a situation where there is an insurance policy available, but the policy is insufficient to fully compensate the parent for his or her injuries, the parent may very well decide that the child should not pursue a claim so as to maximize the available resources available to compensate the parent. Under this scenario, the parent is considering his or her own interests and not those of the child. While there is nothing wrong with the parent's perspective, it should not serve to preclude the child from pursuing a claim.

Aside from the tension that may be present between the interest of a parent and child, the more evident problem with WDTL's argument is that RCW 4.16.190 serves to toll all minor claims except those for medical negligence. Considering that this is not a medical negligence claim, and considering that a guardian ad litem was not appointed until after the father's case was brought to trial, there is no statutory basis for WDTL to argue that the children have forgone the right to assert their claims.

In the case of the Blackshear children, the minors presented evidence that the severity of their father's injury was understood at a point

in time that precluded joining in the father's lawsuit. CP 62-63. After that point, the children's claims were pursued and a guardian ad litem was appointed. If Centennial Contractors thought the minors' claims were apparent, the company had the ability to request the children's addition to the litigation. CR 19. The Blackshear children have shown that it was not feasible to join in their father's lawsuit, and therefore, this Court should remand this matter for trial.

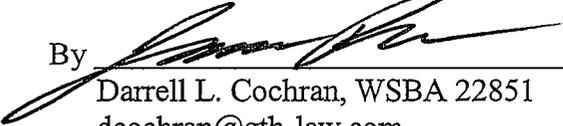
III. CONCLUSION

Appellant respectfully requests that this Court reverse and remand this matter for trial.

Dated this 21st day of July, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Becky J. Niesen, certify under penalty of perjury under the laws

BY [Signature]
DEPUTY

of the State of Washington that the following is true and correct:

A. I am a United States Citizen, over the age of 18 years, not a party to this cause, and competent to testify to the matters set forth herein.

B. I am employed by the law firm of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98401, attorneys for plaintiff/appellant.

C. On July 21, 2007, I caused a copy of the Appellant's Answer to WDTL Amicus Curiae to be served upon the following:

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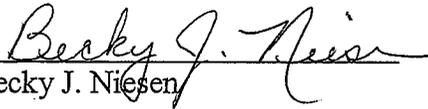
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