

NO. 43792-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
Division Two

BEATRIZ HERNANDEZ and ROSARIO CONTRERAS,

Respondents,

vs.

HELEN STENDER and "JOHN DOE" STENDER, wife and husband
and their marital community,

Appellants.

BRIEF OF RESPONDENT

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033
Attorneys for Respondents

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF THE CASE	2
ARGUMENT	3
A. The trial court did not abuse its discretion in awarding Hernandez attorney fees.	3
1. Neither the statute nor precedent required Judge Serko to deny a statutorily mandated fee award.....	3
2. Judge Serko did not abuse her broad discretion in awarding Hernandez fees.....	9
B. Judge Serko did not abuse her discretion in permitting various items into evidence.	13
C. Stender’s ER 904 claims are an unsupported, unpreserved, and indecipherable waste of Court time.	18
D. Judge Serko did not abuse her discretion in admitting Dr. Bhanji’s medical bills.....	20
E. This Court should award attorney fees and costs to the Respondents under MAR 7.3, RCW 7.06.050 & .060, and RAPs 18.1 & 18.9.....	22
CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Arment v. Kmart Corp.</i> , 79 Wn. App. 694, 902 P.2d 1254 (1995)	22
<i>Boeing Co. v. Sierracin Corp.</i> , 108 Wn.2d 38, 738 P.2d 665 (1987).....	3
<i>Bowers v. Transamerica Title Ins. Co.</i> , 100 Wn.2d 581, 675 P.2d 193 (1983).....	3, 11
<i>Bryant v. Joseph Tree, Inc.</i> , 119 Wn.2d 210, 829 P.2d 1099 (1992).....	8
<i>Christie-Lambert Van & Storage Co. v. McLeod</i> , 39 Wn. App. 298, 693 P.2d 161 (1984)	23
<i>Chuong Van Pham v. Seattle City Light</i> , 159 Wn.2d 527, 151 P.3d 976 (2007).....	passim
<i>Ciminski v. SCI Corp.</i> , 90 Wn.2d 802, 585 P.2d 1182 (1978).....	21, 22
<i>Connell v. Francisco</i> , 127 Wn.2d 339, 898 P.2d 831 (1995).....	16
<i>Cox v. Spangler</i> , 141 Wn.2d 431, 5 P.3d 1265 (2000).....	21
<i>Du K. Do v. Farmer</i> , 127 Wn. App. 180, 110 P.3d 840 (2005)	4, 5, 6, 7
<i>Fay v. N.W. Airlines, Inc.</i> , 115 Wn.2d 194, 796 P.2d 412 (1990).....	23
<i>Hanson v. Estell</i> , 100 Wn. App. 281, 997 P.2d 426 (2000)	4, 6, 7

Hayes v. Weiber Enterprises, Inc., 105 Wn. App. 611, 20 P.3d 496 (2001)	21
Haywood v. Aranda, 143 Wn.2d 231, 19 P.3d 406 (2001).....	3
Hudson v. Hapner, 170 Wn.2d 22, 239 P.3d 579 (2010).....	3
In re Guardianship of Lasky, 54 Wn. App. 841, 776 P.2d 695 (1989)	8
In re Marriage of Lindsey, 101 Wn.2d 299, 678 P.2d 328 (1984).....	15
Jenbere v. Lassek, 169 Wn. App. 318, 279 P.3d 969, <i>rev. denied</i> , 175 Wn.2d 1028 (2012).....	7
Kennedy v. Sundown Speed Marine, Inc., 97 Wn.2d 544, 647 P.2d 30 (1982).....	9
Latham v. Hennessey, 87 Wn.2d 550, 554 P.2d 1057 (1976).....	16
Lay v. Hass, 112 Wn. App. 818, 51 P.3d 130 (2002)	12
Lilly v. Lynch, 88 Wn. App. 306, 945 P.2d 727 (1997)	9
Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 151 P.3d 219 (2007), <i>rev. denied</i> , 162 Wn.2d 1009 (2008).....	18
Mackay v. Acorn Custom Cabinetry, Inc., 127 Wn.2d 302, 898 P.2d 284 (1995).....	17
Mahler v Szucs, 135 Wn.2d 398, 957 P.2d 632, 966 P.2d 305 (1998)	12
Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 79 P.3d 1154 (2003).....	3

<i>Nevers v. Fireside, Inc.</i> , 133 Wn.2d 804, 947 P.2d 721 (1997).....	3
<i>Patterson v. Horton</i> , 84 Wn. App. 531, 929 P.2d 1125 (1997)	21
<i>Rivers v. Wash. State Conf. of Mason Contrs.</i> , 145 Wn.2d 674, 41 P.3d 1176 (2002).....	9
<i>Robel v. Roundup Corp.</i> , 148 Wn.2d 35, 59 P.3d 611 (2002).....	1
<i>Rummer v. Throop</i> , 38 Wn.2d 624, 231 P.2d 313 (1951).....	9
<i>State v. Tracy</i> , 128 Wn. App. 388, 115 P.3d 381 (2005)	11, 12
<i>State v. Wanrow</i> , 88 Wn.2d 221, 559 P.2d 548 (1977).....	17
<i>Story v. Shelter Bay Co.</i> , 52 Wn. App. 334, 760 P.2d 368 (1988)	11, 12
<i>Wash. State Physicians Ins. Exch. v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993).....	8
<i>Xieng v. Peoples Nat'l Bnk.</i> , 120 Wn.2d 512, 844 P.3d 389 (1993).....	22
STATUTES	
RCW 4.84.010	5
RCW 4.84.250	5
RCW 4.84.280	4, 5
RCW 7.06.050	2, 5, 22
RCW 7.06.050(1)(c).....	6
RCW 7.06.060	2, 4, 22

RCW Ch. 7.06..... 3

RULES

CR 68..... 5

ER 609(a) 19

ER 904.....18, 19

ER 904(c)(2) 19

MAR 7.2..... 14

MAR 7.2(b) 14

MAR 7.3..... passim

RAP 18.1 22

RAP 18.1(a)..... 22

RAP 18.91, 2, 22

RAP 18.9(a)..... 22

RAP Title 9..... 11

OTHER AUTHORITIES

Harry M. Cross, *Community Property Law in Washington*
(Revised 1985), 61 WASH. L. REV. 13, 23 (1986)..... 15

Tegland, 5C WASH. PRAC. § 904.5 (5th Ed. & June 2012
Suppl.)..... 19

INTRODUCTION

This appeal is frivolous. It consists of a series of abuse-of-discretion arguments, unsupported by authority or even an adequate record on review. As the trial court, the Honorable Susan K. Serko presiding, easily determined, this defendant, and this insurer, have over-litigated this MAR case in the extreme in order to impose such high costs on these moderate means clients and their counsel that pursuing such relatively small damages claims becomes prohibitively expensive. See, CP 787, F/F 10.¹ Access to justice demands that this Court strongly condemn such tactics.

On the “merits,” appellant Stender challenges an attorney fee award, admission of some evidence, and exclusion of other evidence. As further discussed below, it could not be more firmly established that fee awards and evidentiary rulings are reviewed for an abuse of discretion. Stender makes some far-fetched attempts to suggest de novo review, but no case law or other authority supports any of those arguments. No abuse of discretion occurred.

This Court should affirm and award the Respondents attorney fees and costs, both per statute and per RAP 18.9.

¹ The trial court’s unchallenged findings are verities here and are attached as App. A to this brief. See, e.g., **Robel v. Roundup Corp.**, 148 Wn.2d 35, 42, 59 P.3d 611 (2002) (unchallenged findings verities on appeal).

STATEMENT OF THE CASE

On January 8, 2007, Helen Stender rear-ended Beatriz Hernandez and Rosario Contreras, who were stopped at a light. BA 3; CP 2, 327. Damage to the stopped vehicle was substantial. CP 550-54. Stender's liability was ultimately uncontested. CP 383.

Hernandez sought mandatory arbitration. CP 786, F/F 4. The arbitrator awarded her \$24,505.00. *Id.* Stender sought a trial de novo. *Id.* at F/F 5. Hernandez made two offers of compromise under RCW 7.06.050, first for \$16,600, and then for \$9,500. *Id.* Stender rejected both offers. *Id.*

The jury returned a verdict for Hernandez of \$11,703.00, exceeding her second offer of compromise. *Id.* at F/F 6. The trial court thus found that Stender failed to better her position under MAR 7.3 and RCW 7.06.050 & .060. *Id.* at F/F 6; CP 787, F/F 8.² The court therefore awarded Hernandez attorney fees and costs, and included a 1.5 multiplier due to the high risks of no recovery and the contingent nature of the fee agreement. *Id.* at 787-89.

² As the Court will soon see, Stender's brief is full of inaccuracies and unsubstantiated claims. One example is Appendix A to her opening brief, which is nowhere in the record. This Court should disregard it.

ARGUMENT

A. The trial court did not abuse its discretion in awarding Hernandez attorney fees.

Fee awards are reviewed for an abuse of discretion. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 599, 675 P.2d 193 (1983). Indeed, “to reverse an attorney fee award, an appellate court must find the trial court manifestly abused its discretion.” *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007) (citing *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987)). Here, the trial court’s fee award is amply supported by its unchallenged findings and conclusions. CP 785-89. This argument is frivolous.

1. Neither the statute nor precedent required Judge Serko to deny a statutorily mandated fee award.

The most fundamental purpose of mandatory arbitration is to reduce court congestion and delay. *Hudson v. Hapner*, 170 Wn.2d 22, 30, 239 P.3d 579 (2010) (citing *Haywood v. Aranda*, 143 Wn.2d 231, 238, 19 P.3d 406 (2001); *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 815, 947 P.2d 721 (1997)). To achieve this, RCW Ch. 7.06 encourages parties to accept an arbitrator’s award by penalizing with a mandatory fee award those who request trial de novo and are unsuccessful. See, e.g., *Malted Mousse, Inc. v.*

Steinmetz, 150 Wn.2d 518, 527, 79 P.3d 1154 (2003). Here, Judge Serko perfectly effectuated these statutory purposes by imposing fees on Stender.

But relying on two inapposite cases, Stender argues that Hernandez is not entitled to any fee award because her attorney – after the jury’s verdict but before entry of a formal judgment – told Judge Serko that Stender’s motion for remittitur (which was based on a barred claim that Hernandez’s chiropractor had “waived” his bills)³ was simply trying to avoid her \$9,500 offer of compromise. BA 5-9. Stender is incorrect.

Stender relies on Division Three’s **Hanson v. Estell**, 100 Wn. App. 281, 997 P.2d 426 (2000) and Division One’s **Du K. Do v. Farmer**, 127 Wn. App. 180, 110 P.3d 840 (2005). **Hanson** was an over-litigated property dispute applying RCW 4.84.280 (fees in actions for less than \$10,000) – not RCW 7.06.060. **Hanson** was also a bench trial – not, as here, a jury trial. 100 Wn. App. at 283. And there, unlike here, Hansen both filed an offer of compromise, and also communicated it to the factfinder – the judge – before he

³ As discussed *infra*, this claim barred because any such “waiver” would be a collateral source and thus barred from evidence to reduce a claim for reasonable and necessary medical expenses.

entered judgment, directly contrary to RCW 4.84.280. *Id.* at 290.

Division Three therefore denied fees under that statute (*id.* at 291):

The Hansons filed the settlement offer before judgment. The settlement offer was also communicated to the trier of fact before judgment. For this violation of RCW 4.84.280, the Hansons are not entitled to attorney fees under RCW 4.84.250.

Do v. Farmer involved a three-car collision. 127 Wn. App. at 184. Tran and Do sued Farmer, who alleged that Getty pushed her car into Tran's car. *Id.* at 183-84. Tran joined Getty, and the case was transferred to mandatory arbitration, which ordered Getty to pay \$18,692.72 to Tran (\$15,000 + portion of \$3,192.72 for property loss) and to Do (\$500 + other portion of the \$3,192.72). *Id.* Getty sought a trial de novo, and Tran served Getty with an offer of compromise for \$15,000 plus statutory costs (estimated at \$2,004). *Id.*

Getty then served Tran with a CR 68 offer of judgment for \$17,004, inclusive of all special damages. *Id.* Tran accepted, and judgment was entered, listing the principal amount as \$17,004, attorney fees as \$0, and RCW 4.84.010 costs as \$2,426.36. *Id.* Although Tran filed a satisfaction of judgment, she later sought an award of attorney fees under MAR 7.3 and RCW 7.06.050, which the trial court denied. *Id.* Division One reversed and remanded,

holding that Getty's offer of judgment did not amount to an MAR 7.3 voluntary withdraw of his request for a trial de novo, so fees were mandatory. *Id.* at 186-87.

Getty also argued that Tran waived her fee request by not asking for it before entry of judgment. *Id.* at 187. Rejecting this claim, Division One noted that the offer of compromise may not be filed before entry of judgment under RCW 7.06.050(1)(c):

A postarbitration offer of compromise shall not be filed or communicated to the court or the trier of fact until after judgment on the trial de novo, at which time a copy of the offer of compromise shall be filed for purposes of determining whether the party who appealed the arbitrator's award has failed to improve that party's position on the trial de novo, pursuant to MAR 7.3.

127 Wn. App. at 188 (quoting RCW 7.06.050(1)(c)). In footnote *dicta*, Division One analogized to **Hanson**. *Id.* at n.17.

Do thus did not – as Stender falsely claims – “extend” **Hanson**. BA 7. Rather, it rejected Getty's “waiver” argument and – in footnote *dicta* – explained its holding. **Do**'s footnote *dicta* is neither a holding, nor on point, nor controlling. **Do** is irrelevant.

Stender's reliance on **Do** is even more troubling for its failure to disclose Division One's recent interpretation of its own decision:

In **Do**, we noted that RCW 7.06.050(1)(c) prohibits disclosure to the trial court of an offer of compromise until after entry of judgment and that violation of this provision

could result in the denial of a request for otherwise awardable attorney fees.

Jenbere v. Lassek, 169 Wn. App. 318, 322, 279 P.3d 969, *rev. denied*, 175 Wn.2d 1028 (2012) (emphasis added). This pregnant “could” suggests that Division One did not misunderstand our Supreme Court’s admonition in *Pham* that fee awards are a matter of trial court discretion.

Judge Serko did not abuse her discretion in refusing to extend *Hanson* here. Stender raised this argument before Judge Serko, who rejected it. CP 754-56. Where, as here, Stender was seeking a windfall and asking Judge Serko to require the forfeiture of Hernandez’s statutory right to a mandatory fee award, the judge had broad discretion to determine the appropriate result in light of the MARs’ unequivocal purpose to discourage requests for trial de novo like Stender’s. As noted above, neither *Hanson* nor *Do* is on point or controlling, so Judge Serko properly enforced the broader policy and did justice instead.

Stender may argue that the “plain language” of the statute mandates a fee waiver, but that too would be false. The statute says that an offer of compromise “shall not” be filed or disclosed to the court or the factfinder, but it is silent on what remedy is

appropriate for a violation. A trial judge reasonably might choose not to impose any terms against a party or trial counsel who violated the statute, or to impose some lesser sanction, rather than simply forfeiting statutorily-mandated attorney fees. Indeed, courts normally impose the least severe sanction necessary to effectuate the relevant policy. See, e.g., *Wash. State Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 355-56, 858 P.2d 1054 (1993) (citing *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 225, 829 P.2d 1099 (1992); *In re Guardianship of Lasky*, 54 Wn. App. 841, 855, 776 P.2d 695 (1989)). The crucial policy here is to discourage requests for trial de novo, and depriving Hernandez of fees would not further it.

In any event, Judge Serko was plainly unaffected by the disclosure, so she imposed no sanctions. The jury had already returned its verdict, and the judgment was no different than the verdict. A technical violation that could not affect the factfinder is insignificant, practically speaking, and Stender fails to show that Judge Serko acted improperly or otherwise violated her oath as a judicial officer. Be that as it may, the statute does not mandate – or even mention – a forfeiture, so Stender’s claims are frivolous.

2. Judge Serko did not abuse her broad discretion in awarding Hernandez fees.

Stender also claims that Judge Serko erred by awarding “excessive” fees. BA 9-14. Stender fails to challenge any of Judge Serko’s findings, so they are verities on appeal. CP 785-88 (attached). Those verities amply support the fee award. *Id.* Judge Serko plainly did not abuse her discretion. This too is frivolous.

Stender apparently tries to convert the standard of review from the extremely well established abuse of discretion standard into a question of law permitting de novo review, using her motion for reconsideration. BA 10. But Stender fails to assign error to the order denying her motion for reconsideration, and in any event, it is very well established that a denial of a motion for reconsideration is also reviewed for an abuse of discretion. See, e.g., ***Rivers v. Wash. State Conf. of Mason Contrs.***, 145 Wn.2d 674, 685, 41 P.3d 1176 (2002) (citing ***Rummer v. Throop***, 38 Wn.2d 624, 231 P.2d 313 (1951); ***Kennedy v. Sundown Speed Marine, Inc.***, 97 Wn.2d 544, 647 P.2d 30 (1982); see also ***Lilly v. Lynch***, 88 Wn. App. 306, 321, 945 P.2d 727 (1997)). Stender’s repeated failures to cite controlling authority are cause for concern.

Indeed, they illuminate one of the reasons that Judge Serko not only awarded reasonable fees, but a 1.5 multiplier:

This case involved soft tissue injuries caused by a motor vehicle collision. Evidence presented suggests that these cases are costly to litigate in comparison to the recovery in many such cases and that the defense, **particularly this defense, and its insurer** vigorously defend such cases causing many lawyers to be reluctant to accept such cases; and that taking this case and the hours expended by Plaintiff's counsel effected, significantly, Plaintiff's counsels earnings on other cases.

Additionally, **the contingent nature of the fee** made the risks of taking on this case by Plaintiff's counsel significant, in that there was a likelihood that Plaintiff's counsel might not earn anything (or very little) for the work that they did and might not recoup the costs that they had advanced or was responsible for.

CP 787, F/F 10 (emphasis & paragraphing added). Thus, Judge Serko awarded a multiplier due to high risk and low likelihood of success. Stender's arguments here similarly evidence the way in which these defendants are willing to litigate beyond any reason a small case. Judge Serko's unchallenged findings are verities.

Consistent with Stender's failure to cite controlling authority throughout the opening brief, no mention is made there of **Pham, supra**. The law is clear that not only may a multiplier be warranted in a high-risk contingent-fee case like this one, but in fact the failure to award a multiplier due to irrelevant factors can be an abuse of discretion. **Pham**, 159 Wn.2d at 542-43. **Pham** (like many other cases) lays out the appropriate loadstar and multiplier analyses, and Judge Serko's Findings and Conclusions properly consider and

affirm the reasonable hours expended, the reasonable hourly rates (\$200 and \$250), and the reputation and diligence of counsel, establishing a lodestar of \$51,415.00 through a five-day trial, which is plainly a reasonable amount. CP 785-89; *see also Bowers*, 100 Wn.2d at 597-602. On the multiplier, the court considered the undesirability of the case, the risk of receiving little or no fee should the verdict be insufficient, the risk that costs advanced might not be recouped, and the impact of this case on the profitability of counsel's practice. CP 788-89; *Pham, supra*. Judge Serko did not abuse her discretion. This claim is frivolous.

Stender's other claim seems to be that the judge allocated too much of the cost of the litigation to Hernandez, rather than to Contreras. BA 10-12. But Stender relies on broad and unsubstantiated claims that the "amount of trial testimony, presentation, and argument, was split virtually 50/50." BA 11 (no citation in original). Stender provides no citation because, although she is the appellant with the burden to provide this Court with an adequate record on review (*see generally* RAP Title 9), she has provided only a very limited, partial transcript. *See also State v. Tracy*, 128 Wn. App. 388, 394-95, 115 P.3d 381 (2005) (citing *Story v. Shelter Bay Co.*, 52 Wn. App. 334, 345, 760 P.2d 368

(1988)), *aff'd*, 158 Wn.2d 683 (2006). Without a full record, this Court cannot even estimate whether Stender's claims are true, much less deem them proved. Where, as here, the appellant fails to meet her burden, "the trial court's decision stands." **Tracy**, 128 Wn. App. at 394-95; **Story**, 52 Wn. App. at 345. In any event, Judge Serko saw the trial and was in the best position by far to make this determination.

Finally, Stender repeatedly complains that the Hernandez fee award is six times the amount of Contreras' fees. BA 9, 11, 14. The ratio between their fees is not a relevant factor, and under **Pham**, it would be an abuse of discretion to deny them – or even a multiplier – on that basis. Moreover, the size of a fee award is not dispositive. See, e.g., **Mahler v Szucs**, 135 Wn.2d 398, 433, 957 P.2d 632, 966 P.2d 305 (1998). This total fee award is only four times Hernandez's damages award, and this court has affirmed a fee award that was 31 times the damages. See **Lay v. Hass**, 112 Wn. App. 818, 826, 51 P.3d 130 (2002). As Judge Serko aptly noted, a smaller award would discourage taking on such cases. Again, Stender's fee arguments are frivolous.

B. Judge Serko did not abuse her discretion in permitting various items into evidence.

Stender's second abuse of discretion claim is that the trial court made various evidentiary errors based on Hernandez's and Contreras's alleged failures to "disclose" certain claims, including property damage to the vehicle, "essential services," and wage loss. BA 14-27. No abuse of discretion occurred. Stender's evidentiary claims are frivolous.

As with Stender's fee arguments, she has failed to provide a sufficient record establishing that she properly objected to, and thus preserved, these evidentiary arguments. It is impossible to tell the actual basis for any alleged objection below or the trial court's actual rulings. This is fatal to review of these issues on appeal.

The crux of Stender's claim is that the plaintiffs' alleged failure "to do anything other than raise the issue[s] at arbitration" means that the trial court's unspecified rulings allowing the evidence are "manifestly unreasonable because the Stenders were not able to adequately prepare these issues for trial." BA 26. This is a non-sequitur: Stender concedes that she was aware of these claims due to the arbitration, yet wished to exclude this evidence due to allegedly unanswered discovery – a real "gotcha." The trial

court's apparent decision that Stender was amply aware of the claims was not an abuse of discretion.

To avoid this obviously fair result, Stender claims (BA 25) that such a ruling would somehow "violate" MAR 7.2, under which a trial de novo is conducted "as though no arbitration proceeding had occurred," meaning that no reference shall be made to the arbitration. MAR 7.2(b)(1). Yet MAR 7.2(b)(2) says that testimony "given during the arbitration proceeding *is admissible* in subsequent proceedings," albeit without identifying it as such. MAR 7.2(b)(2) (emphasis added). It is difficult to see how the trial court taking note that testimony was previously given to Stender on these evidentiary issues could possibly violate MAR 7.2. No case so holds, and there was no abuse of discretion in any of these rulings.

In any event, Stender argues that Judge Serko should have excluded evidence of property damage to the car because (1) Hernandez allegedly did not disclose this claim, and (2) the vehicle belonged to Sergio Hinojosa. BA 16-21. The relevant interrogatory (No. 34) asked for the following list (CP 483):

Set forth the exact amount you are claiming for general damages, special damages for medical, hospital, and medical treatment and loss of earnings.

Hernandez's response provided precisely that list (CP 494):

ANSWERING INTERROGATORY NO. 34:

General Damages \$25,000.00

Special Damages:

Chiropractic Weilness & Rehab \$6791,84

Chiropractic Weilness & Rehab-Massage \$2,722.50

Consolidated Imaging \$1,650.00

Karmel Medical Clinic \$ 634.00

\$11,798.34

In short, Interrogatory 34 did not ask for a separate listing of property damages, so the answer did not provide one. The trial court did not abuse its discretion in refusing to exclude this evidence on the basis of this interrogatory answer.

On the vehicle's ownership, Hernandez submitted a brief to the trial court explaining that although the vehicle title showed Mr. Hinojosa's name, Hernandez had a legally cognizable interest in the vehicle. CP 682-85. She had co-habited with him in a long-term, stable, and marital-like relationship, now known as a Committed Intimate Relationship, giving her a colorable property interest in their car. *Id.* (citing *In re Marriage of Lindsey*, 101 Wn.2d 299, 304, 678 P.2d 328 (1984); Harry M. Cross, *Community Property Law in Washington (Revised 1985)*, 61 WASH. L. REV. 13, 23

(1986); *Latham v. Hennessey*, 87 Wn.2d 550, 554, 554 P.2d 1057 (1976); *Connell v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995)). This is a sound legal basis for recognizing Hernandez's property interest, and there is no dispute that the vehicle suffered at least the \$625 in damages the jury awarded. CP 692 (attached).

While Stender now claims that the CIR doctrine does not apply here (BA 18-19), she apparently failed to raise that argument in the trial court, instead generally asserting a lack of ownership and "accord and satisfaction" (which she does not argue on appeal). CP 657-59. She cannot challenge this claim for the first time on appeal. And in any event, Stender again fails to bring forth an adequate record to determine Judge Serko's actual ruling.⁴

Stender next claims that Judge Serko should have excluded Hernandez's and Contreras's "essential services" claims because they were not disclosed in discovery. BA 22-23. Stender fails to note that this is a purely academic, formal, and immaterial argument, in as much as the jury returned two verdicts of \$0 for "domestic services." CP 692. Stender concedes that any error is

⁴ Stender throws in a new – and equally frivolous – "jurisdiction"/"standing" argument at BA 21. The trial court obviously had jurisdiction over this case, and Hernandez obviously had standing to bring it. No case applies these doctrines to individual claims.

harmless if it is “trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.” BA 14 (*quoting without emphases Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 311, 898 P.2d 284 (1995) (quoting *State v. Wanrow*, 88 Wn.2d 221, 237, 559 P.2d 548 (1977))). This claim – like the rest of Stender’s appeal – is frivolous.

The same is equally true of Stender’s final frivolous evidentiary claim regarding wage loss: the jury gave \$0 to Hernandez, and \$2,400 to Contreras. CP 692. As discussed *supra*, Stender was well aware of these claims, yet she fails to identify where or how she objected to them. BA 23-24. Indeed, in August 2010, Contreras denied Stender’s request for an admission that she missed no work and lost no income due to the collision. CP 925. And Stender has failed to provide the Court with Contreras’s testimony, so it is impossible to know whether her objection was properly preserved, on what basis the jury made this award, and on what ground the trial court actually ruled. The \$0 Hernandez award is a trivial, formal, and a purely academic issue that did not affect the outcome. This entire argument is trivial, frivolous, and not properly preserved or presented.

C. Stender's ER 904 claims are an unsupported, unpreserved, and indecipherable waste of Court time.

Stender apparently claims that Judge Serko improperly rejected the nine documents listed at BA 29 under ER 904. BA 27-32. Or perhaps she means to challenge only the court's alleged failures to admit items 1, 2, and 9 through 11, the only seven documents that she actually discusses. BA 30-31. Either way, her claims are again frivolous.

On Stender's BA 29 list, the documents numbered 4 through 7 appear to have been admitted by stipulation at trial as Exhibits 19 through 23, according to the Exhibit List (CP 1085-87, copy attached). *Compare* BA 29 *with* CP 1086. Without more, it is impossible to see an error. More time wasting.

Also according to the Exhibit List, numbers 1 and 2 were identified as trial Exhibits 16 and 17, but Stender failed to even offer them. CP 1086. Any alleged error was invited. And besides, these are "records reviews" by Stender's expert witness, and without a transcript of his testimony, it is impossible to know (or frankly to imagine) that any alleged error was prejudicial – he certainly could have testified about the contents of these documents. In any event, expert reports simply are not covered by ER 904. *Lutz Tile, Inc. v.*

Krech, 136 Wn. App. 899, 904-05, 151 P.3d 219 (2007), *rev. denied*, 162 Wn.2d 1009 (2008).

Stenders' Nos. 9 - 11 all concerned Dr. Bhanji, documents likely excluded from evidence on the basis of unchallenged motions in limine. Since those unchallenged rulings were correct, these documents were irrelevant, and relevancy objections are not waived by failing to object under ER 904. See ER 904(c)(2) ("objection on the grounds of relevancy need not be made until trial"); Tegland, 5C WASH. PRAC. § 904.5 (5th Ed. & June 2012 Suppl.) (counsel often will not know about relevance objections until trial). Simply put, the documents have no bearing on the plaintiffs' damages – the sole issue in the case – so while they might have been used to cross-examine Dr. Bhanji (there is no way to tell due to Stender's inadequate record) they were simply not relevant.⁵

Bottom line, it is again impossible to know whether Stender properly objected, the basis of Judge Serko's actual rulings, or whether these documents were even properly used at trial, in the absent a record. Stender again fails to meet her burden to provide an adequate record for appellate review. This entire argument is frivolous and unsupported.

⁵ Stender cites ER 609(a), but fails to address or meet its requirements

D. Judge Serko did not abuse her discretion in admitting Dr. Bhanji's medical bills.

The trial court did not abuse its discretion in admitting Dr. Bhanji's medical bills. BA 32-34. Allstate Insurance went after Chiropractor Al Noor Bhanji in a separate litigation. CP 890-91. Allstate managed to catch him being untruthful as to his business operations. CP 890. There is no evidence, however, that Dr. Bhanji was untruthful about the services he rendered.

Allstate and Dr. Bhanji entered into a settlement in which he waived his bills in a number of cases. CP 891. In the instant lawsuit, he declared as follows:

I, and/or licensed medical professionals, provided medical treatment to Rosario Contreras at my clinics regarding complaints that were made by Rosario Contreras. ***The treatment rendered by myself and/or the other medical professionals at my clinics was reasonable and necessary.*** My clinics submitted medical bills for this treatment. Allstate disputed these bills. ***The medical bills for the treatment rendered by the Clinics for Rosario Contreras are being waived for reasons unrelated to this subject litigation.***

CP 909-10 (emphases added). He provided a nearly identical declaration with regard to Hernandez. CP 557-58.

Stender seeks to exclude Dr. Bhanji's medical bills on the basis that he "is not collecting these bills." CP 203. But the bills were obviously probative of the plaintiffs' past medical expenses,

where Dr. Bhanji specifically stated that his treatment was reasonable and necessary. See, e.g., *Patterson v. Horton*, 84 Wn. App. 531, 543, 929 P.2d 1125 (1997) (“medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable”).

Moreover, plaintiffs may recover the reasonable value of medical services received, regardless of whether they are ultimately liable for the bills. For example, where a treating physician accepts less than the amount billed as full payment, the bills are admissible, and the tortfeasor is barred by the collateral source rule from presenting testimony regarding the difference between the bills and the amount paid. *Hayes v. Weiber Enterprises, Inc.*, 105 Wn. App. 611, 615-16, 20 P.3d 496 (2001) (citing *Cox v. Spangler*, 141 Wn.2d 431, 5 P.3d 1265 (2000)). *Hayes* is dispositive, and this issue is frivolous.

Simply put, the collateral source rule barred Stender’s claim that Dr. Bhjani’s bills should be excluded, where he stated that they were reasonable and necessary. Essentially, the question is not whether there is a windfall, but who should receive it. *Ciminski v. SCI Corp.*, 90 Wn.2d 802, 806-07, 585 P.2d 1182 (1978). Courts

have had no trouble concluding that the equities favor the victim, not the tortfeasor. *Id.*; accord ***Xieng v. Peoples Nat'l Bnk.***, 120 Wn.2d 512, 523, 844 P.3d 389 (1993). And where, as here, Dr. Bhanji testified, Stender's failure to provide his testimony again leaves the Court with an inadequate record on review.

The Court will also note that Stender cites not a single case or other authority that actually supports this argument. There is none. The argument is frivolous. So is the appeal.

E. This Court should award attorney fees and costs to the Respondents under MAR 7.3, RCW 7.06.050 & .060, and RAPs 18.1 & 18.9.

Reasonable attorney fees are recoverable on appeal when allowed by statute, rule, or contract, and RAP 18.1(a). A party who is entitled to attorney fees under MAR 7.3 at the trial court level is also entitled to attorney fees on appeal if the appealing party again fails to improve her position. ***Arment v. Kmart Corp.***, 79 Wn. App. 694, 700, 902 P.2d 1254 (1995). This Court should award Respondents' attorney fees and costs.

This Court may require a party to "pay terms or compensatory damages" due to a "frivolous appeal." RAP 18.9(a). "An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that

there was no reasonable possibility of reversal.” **Fay v. N.W. Airlines, Inc.**, 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990). This is that case:

the purpose of an attorney fee award under MAR 7.3 . . . is to deter meritless appeals. The appellant can avoid the assessment of attorney fees by not bringing a meritless appeal.

Christie-Lambert Van & Storage Co. v. McLeod, 39 Wn. App. 298, 308, 693 P.2d 161 (1984).

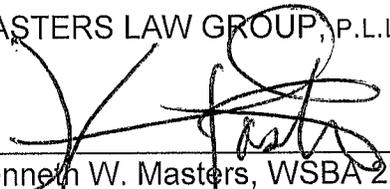
Due to Stender’s tactics, this Court is faced with a series of abuse-of-discretion issues (which Stender falsely claims are reviewed de novo) and an insufficient record on which to resolve them. This is part and parcel of what Judge Serko recognized as this defendant’s (and her insurer’s) scheme to make justice in small collision cases too expensive for people of moderate means. CP 787, F/F 10. Access to justice requires that this Court strongly condemn this behavior, which is directly contrary to the letter, spirit, and intent of the MARs. The Court should find this appeal frivolous and also award fees on that ground.

CONCLUSION

For the reasons stated, this Court should affirm and award attorney fees and costs to the Respondents.

RESPECTFULLY SUBMITTED this 10th day of April, 2013.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

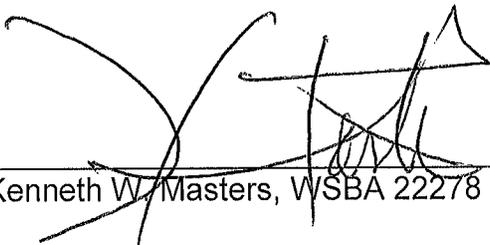
I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 10th day of April 2013, to the following counsel of record at the following addresses:

Co-counsel for Respondents

Rick Park
Park Chenauer & Associates, Inc., P.S.
2505 S. 320th Street, Suite 100
Federal Way, WA 98003

Counsel for Appellants

Rory W. Lied, III
Jeremy M. Zener
Cole Wathen Lied & Hall, P.C.
1000 Second Avenue, Suite 1300
Seattle, WA 98104



Kenneth W. Masters, WSBA 22278

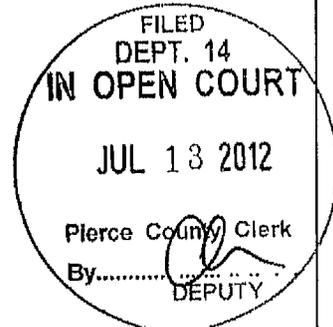
APPENDICES

- CP 785 – 789 – Findings of Fact and Conclusions of Law Regarding Award of Attorney's fees and Costs
- CP 691 – 693 – Special Verdict Form
- CP 1085–1087 – Exhibit Record
- RCW 4.84.010 – Costs allowed to prevailing party – Defined – Compensation of attorneys.
- RCW 4.84.280 – Attorneys' fees as costs in damage actions of ten thousand dollars or less – Offers of settlement in determining.
- RCW 7.06.050 – Decision and award – Appeals – Trial – Judgment.
- RCW 7.06.060 – Costs and attorneys' fees.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

The Honorable Susan Serko
Hearing Date: July 13, 2012



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

BEATRIZ HERNANDEZ and ROSARIO
CONTRERAS,

Plaintiff,

vs.

HELEN STENDER and "JOHN DOE"
STENDER, wife and husband and their marital
community,

Defendants.

No. 09-2-15257-3

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
AWARD OF ATTORNEY'S FEES AND
COSTS**

The Court makes the following findings of fact and conclusions of law on Plaintiffs' motion for an award of attorney's fees.

FINDINGS OF FACT

1. This is a personal injury claim arising out of a motor vehicle collision on January 8, 2007.

2. The Plaintiffs hired the law firm of Park Chenaur & Associates, Inc. P S. on a contingency fee contract.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING AWARD OF ATTORNEY'S FEES - 1**

PARK CHENAUR & ASSOCIATES, INC., P.S.
2505 S. 320th Street, Suite 100
Federal Way, Washington 98003
(253) 839-9440 - Fax (253) 839-9485

1 3. The Plaintiffs were not in a financial position to pay the attorney fees and
2 expenses of litigation on an hourly basis. The expenses were advanced by the law firm of Park
3 Chenaour & Associates, Inc. P.S. Plaintiffs' counsel had advanced costs of or was responsible for
4 costs in excess of \$10,000.00.

5 4. The Plaintiff submitted her case to mandatory arbitration. At the arbitration, the
6 arbitrator found in favor of the Plaintiff Beatriz Hernandez in the amount of \$24,505.00.

7 5. Thereafter the Defendant's attorney filed and served a request for Trial de Novo.
8 After the de novo request, Ms. Hernandez made two Offers of Compromise pursuant to RCW
9 7.06.050. The first Offer of Compromise was for \$16,600.00. The second Offer of Compromise
10 was for \$9,500.00 which was served on Defendant's attorney on June 20th, 2011. Defendant
11 rejected both Offers of Compromise and this matter proceeded to trial.

12 6. After a five-day trial beginning on June 11, 2012, the jury returned a verdict in
13 favor of Ms. Hernandez in the amount of \$11,703.00, which exceeded the final Offer of
14 Compromise. Defendant failed to improve its position as required under MAR 7.3 and RCW
15 7.06.050 and .060.

16 7. From the date of the last Offer of Compromise on June 20, 2012 until the verdict
17 was rendered, Plaintiffs' counsel Rick Park worked 106.9 hours through the conclusion of trial
18 and an additional 7.5 hours post-trial in preparing Plaintiffs' Motion for Entry of Judgment and
19 Award of Costs and Attorney Fees and the other documents necessary to obtain an award of fees
20 and costs. Plaintiffs' counsel has provided documentation supporting those hours worked.
21 Additionally, Plaintiff's counsel Dan Gerl worked 92.7 hours through the conclusion of the trial.
22 Rick Park's partner in the firm, Angel Chenaour, worked 30.7 hours through the conclusion of the

23

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING AWARD OF ATTORNEY'S FEES - 2

PARK CHENAOUR & ASSOCIATES, INC., P.S.
2505 S 320th Street, Suite 100
Federal Way, Washington 98003
(253) 839-9440 – Fax (253) 839-9485

1 trial and 2.0 hours post-verdict in researching for a response to the defense motion for remittitur.

2 Documentation of these hours was also provided.

3 8. The jury's verdict exceeded the Offer of Compromise made by Plaintiff, pursuant
4 to RCW 7.06.050.

5 9. The entirety of hours spent working on this case after the Offer of Compromise as
6 discussed above, by Plaintiff's counsel and attorneys in the firm, were reasonable and
7 productive.

8 10. This case involved soft tissue injuries caused by a motor vehicle collision.
9 Evidence presented suggests that these cases are costly to litigate in comparison to the recovery
10 in many such cases and that the defense, particularly this defense, and its insurer vigorously
11 defend such cases causing many lawyers to be reluctant to accept such cases; and that taking this
12 case and the hours expended by Plaintiff's counsel effected, significantly, Plaintiff's counsels
13 earnings on other cases. Additionally, the contingent nature of fee made the risks of taking on
14 this case by Plaintiff's counsel significant, in that there was a likelihood that Plaintiff's counsel
15 might not earn anything (or very little) for the work that they did and might not recoup the costs
16 that they had advanced or was responsible for.

17 11. Plaintiff's counsel is experienced in the personal injury field and has a good
18 reputation and diligently represented the Plaintiffs in this case.

19 12. Plaintiff's counsel's hourly rate of \$250 for Rick Park and \$200 for Dan Gerl and
20 Angel Chenaar is reasonable considering the reputation of Plaintiff's counsel and the quality of
21 the work provided.

22

23

1 13. Plaintiff's counsel was responsible for or had expended costs advanced of over
 2 \$10,000.00. The actual costs that are allowed by statute or rule are documented in the motion.
 3 Those costs were reasonable and necessary to the handling of the case by Plaintiff's counsel.
 4

5 **CONCLUSIONS OF LAW**

6 1. The plaintiffs are entitled to costs and reasonable attorney fees under MAR 7.3,
 7 RCW 4.84.010, and RCW 4.06.060 because the Defendants failed to improve their position after
 8 filing a request for Trial de Novo, and because the verdict in favor of Plaintiff exceeded the
 9 amount of the Plaintiff's Offer of Compromise.

10 2. 106.9 hours documented by Plaintiff's attorney Rick Park and 30.7 by his partner
 11 Angel Chenaour, and the 92.75 hours documented by Plaintiff's Dan Gerl were reasonably
 12 expended in this case and were productive. The 9.5 hours, documented by Plaintiff's attorneys
 13 after verdict, were reasonably expended and productive in this case.

14 3. Plaintiff's counsels' hourly rates of \$250 for Rick Park and \$200 for Dan Gerl and
 15 Angel Chenaour are reasonable considering the reputation of Plaintiff's counsel and the quality of
 16 work provided.

17 4. The lodestar fee in this case is 106.9 hours times \$250 per hour (for Rick Park),
 18 for a total of \$26,725.00; 92.75 hours times \$200 per hour (for Dan Gerl) for a total of
 19 \$18,550.00; and 30.7 hours times \$200 (for Angel Chenaour) for a total of \$6,140.00. Total
 20 lodestar fee for Plaintiff's counsel through conclusion of trial is \$51,415.00.

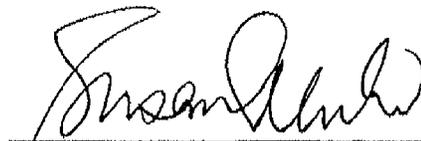
21 5. The lodestar fee for the attorneys' time spent through verdict should be adjusted
 22 upward by a multiple of 2.0, due to the undesirability of the case; the fact that the case was
 23 handled on a contingency fee basis by Plaintiff's counsel; the risks to Plaintiff's counsel that

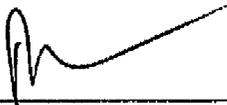
1 little or no fee, would be earned if a verdict had been returned for less than the Offer of
2 Compromise; the risk to Plaintiffs' counsel that the costs advanced in this case through trial
3 might not be repaid; and the fact that working on this case prevented Plaintiffs' counsel from
4 working on other cases, impacting the office's profitability.

5 6. The Court further concludes as a matter of law that under the factors enumerated
6 in *Bowers v. Transamerica Title Ins.*, 100 Wn. 2d 581, 597-602 (1983), and all the factors
7 provided by Plaintiff in her motion and the supporting declarations as well as considerations of
8 resolving Court congestion, a Lodestar multiplier of 1.5 is appropriate here. As a result, the
9 Lodestar amount set forth in paragraph 4 in the amount of \$ 51,415.⁰⁰ shall be adjusted
10 upwards by a multiple of ^{1.5}~~2.0~~ for an adjusted Lodestar amount of \$ 77,122.⁵⁰.

11 7. Further, Statutory Costs of \$7,559.30 should be awarded. Total Statutory Costs
12 and Attorney Fees, as adjusted, are \$ 84,681.⁸⁰ + Post Verdict Atty fees
13 of \$ 3,025.⁰⁰ for a total of \$ 87,706.⁸⁰

14 DONE IN OPEN COURT this 13 day of July, 2012.

15
16
17 
18 JUDGE SUSAN SERKO

19 Presented by:
20 /s/ Rick Park 
21 Rick Park, WSBA #27352
22 of Attorneys for Plaintiff

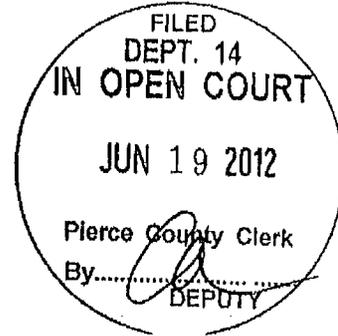
23
FILED
DEPT. 14
IN OPEN COURT
JUL 13 2012
Pierce County Clerk
By.....
DEPUTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING AWARD OF ATTORNEY'S FEES - 5

PARK CHENAUR & ASSOCIATES, INC., P.S.
2505 S 320th Street, Suite 100
Federal Way, Washington 98003
(253) 839-9440 - Fax (253) 839-9485



Honorable Susan Serko



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

BEATRIZ HERNANDEZ and ROSARIO
CONTRERAS,

Plaintiffs,

v.

HELEN STENDER and RICHARD STENDER,
wife and husband and their marital community,

Defendants.

No. 09-2-15257-3

SPECIAL VERDICT FORM

We, the jury, answer the questions submitted by the Court as follows:

QUESTION 1: Was Beatriz Hernandez injured?

ANSWER: Yes No
 X _____

QUESTION 2: Was Rosario Contreras injured?

ANSWER: Yes No
 X _____

(INSTRUCTION: If you answered "No" to Question 1 and 2, sign and return this verdict form. If you answered "Yes" to Question 1 and/or 2, proceed to the appropriate Question 3 and/or 4.)

QUESTION 3: Was Helen Stender's negligence the proximate cause of injury to Beatriz Hernandez?

ANSWER: Yes X No _____

QUESTION 4: Was Helen Stender's negligence the proximate cause of injury to Rosario Contreras?

ANSWER: Yes X No _____

(INSTRUCTION: If you answered "No" to Question 3 and 4, sign and return this verdict form. If you answered "Yes" to Question 3 and/or 4, proceed to the appropriate Question 5 and/or 6).

QUESTION 5: What do you find to be Beatriz Hernandez's amount of damages?

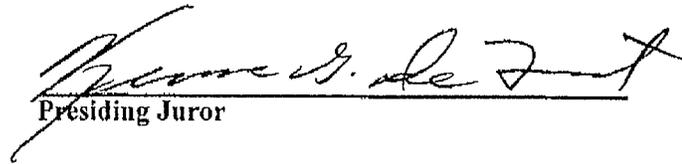
- (1) for medical expenses \$ 4,578⁰⁰
- (2) for wage loss \$ 0
- (3) for property damages \$ 625⁰⁰
- (4) for domestic services \$ 0
- (5) for general damages \$ 6,500⁰⁰

QUESTION 6: What do you find to be Rosario Contreras's amount of damages?

- (1) for medical expenses \$ ^{KP #} 1,485⁰⁰
- (2) for wage loss \$ 2,400⁰⁰
- (3) for domestic services \$ 0
- (4) for general damages \$ ^{KP #} 5,200⁰⁰

(INSTRUCTION: Sign this verdict form and notify the judicial assistant.)

DATE: 6-19-2012


Thomas G. de Font
Presiding Juror



09-2-15257-3 38721029 EXRV 06-20-12

ORIGINAL

FILED
IN COUNTY CLERK'S OFFICE

AM JUN 19 2012 P.M

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY *[Signature]* DEPUTY
in open court

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

BEATRIZ HERNANDEZ,
Plaintiff,

Cause No 09-2-15257-3

vs

EXHIBIT RECORD

HELEN STENDER,
Defendant

New Nick 6-20-12

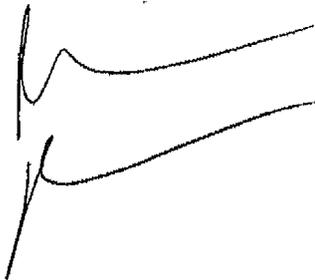
P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P	1	Property damage estimate of the 1987 Honda Civic	X		Stipulated	06/11/12	
P	2	Property damage estimate of the 1998 Mercury Sable	X		Stipulated	06/11/12	
P	3	Photographs of the 1987 Honda Civic	X		Stipulated	06/11/12	
P	4	Photographs of the 1998 Mercury Sable	X		Stipulated	06/11/12	
P	5	Declaration of Jerita Young regarding loss of earnings	X	X	Denied	06/11/12	
P	6	Billings of Alnoor Bhanji, D C for Ms Hernandez	X		Admitted	06/13/12	
P	7	Billings of Alnoor Bhanji, D C for Ms Contreras	X		Admitted	06/13/12	
P	8	Billings of Sergey Evchenko, LMP for Ms Hernandez	X		Admitted	06/13/12	
P	9	Treatment records by Sergey Evchenko, LMP, for Ms Hernandez	X	X	Admitted	06/14/12	
P	10	Billings of Sergey Evchenko, LMP for Ms Contreras	X		Admitted	06/13/12	
P	11	Treatment records by Sergey Evchanko, LMP for Ms Contreras	X	X	Admitted	06/14/12	

	P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
1	P	12	Billings of M Khalighi, M D	X	X	Reserved	06/13/12	
2	P	12A	Redacted Billings of M Khalighi, M D (from Exhibit 12)	X		Agreed	06/18/12	
3	P	13	Treatment records of M Khalighi, M D	X	X	Admitted	06/14/12	
4	P	14	MRI billing and record	X		Admitted	06/13/12	
5	P	15	Report of Mark Olson					
6	P	15A	Future Forensics damage repair estimate for 1987 Honda Civic (redacted from Ex 15)	X		Admitted	06/14/12	
7	P	15B	Drawing of bumper assembly (redacted from Ex 15)	X		Admitted	06/14/12	
8	D	16	Records review of Ms Hernandez					
9	D	17	Records review of Ms Contreras					
10	D	18	Report of Allan F Tencer, Ph D					
11	D	19	Photographs of the 1987 Honda Civic	X		Stipulated	06/11/12	
12	D	20	Photographs of the 1998 Mercury Sable	X		Stipulated	06/11/12	
13	D	21	Repair estimate for the 1987 Honda Civic	X		Stipulated	06/11/12	
14	D	22	Repair estimate for the 1998 Mercury Sable	X		Stipulated	06/11/12	
15	D	23	Repair estimate for the 1987 Honda Civic	X		Stipulated	06/11/12	
16	D	24	Certified copy of Alnoor Bhanji, D C guilty pleas for three counts of false swearing, filed on May 31, 2011, in King County Superior Court No. 10-1-09583-3 KNT	X	X	Denied	06/11/12	
17	D	25	Complaint, Allstate v Bhanji, et al , King County Superior Court Cause No 07-2-39916-0 KNT	X	X	Denied	06/11/12	
18	D	26	Confession of Judgment, King County Superior Court Cause No. 07-2-39916-0 KNT	X	X	Denied	06/11/12	
19	D	27	Dr Bhanji's declaration regarding Beatriz Hernandez					
20	D	28	Dr Bhanji's declaration regarding Rosario Contreras					
21	P	29	Medical records of Alnoor Bhanji, D C re Beatriz Hernandez	X	X	Admitted	06/13/12	
22	P	30	Medical records of Alnoor Bhanji, D C re Rosario Contreras	X	X	Admitted	06/14/12	
23	D	31	Illustration used during cross-examination of witness Alnoor Bhanji, D C	X		Illustrative Only	06/14/12	
24								
25								

P D	No	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
D	32	Copy of check for damage loss to vehicle paid to Sergio Henojosa	X		Admitted	06/14/12	
D	33	Drawing by witness Allan Tencer, Ph D during voir dire by Mr Park					
D	34	Drawing by witness Allan Tencer, Ph D during testimony - Occupant	X		Illustrative Only	06/18/12	
D	35	Engineering diagram for front end of a 1998 Mercury Sable					
D	36	Drawing by witness Allan Tencer, Ph D during testimony - Collision	X		Illustrative Only	06/18/12	
D	37	Drawing by witness Allan Tencer, Ph D during testimony - Bumper	X		Illustrative Only	06/18/12	
D	38	Drawing by witness Allan Tencer, Ph D during testimony- G Forces	X		Illustrative Only	06/18/12	

Depositions

Rosario Contreras taken February 10, 2010
 Alnoor Bhanji, D C. taken November 21, 2007
 Larry McDevitt taken July 11, 2011
 Helen Stender taken September 10, 2010
 David Nicholes, D C taken July 11, 2011



RCW 4.84.010

Costs allowed to prevailing party — Defined — Compensation of attorneys.

The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

- (1) Filing fees;
- (2) Fees for the service of process by a public officer, registered process server, or other means, as follows:
 - (a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
 - (b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;
- (6) Statutory attorney and witness fees; and
- (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

[2009 c 240 § 1; 2007 c 121 § 1; 1993 c 48 § 1; 1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

RCW 4.84.280

Attorneys' fees as costs in damage actions of ten thousand dollars or less — Offers of settlement in determining.

Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

[1983 c 282 § 1; 1980 c 94 § 3; 1973 c 84 § 4.]

RCW 7.06.050

Decision and award — Appeals — Trial — Judgment.

(1) Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

(a) Up to thirty days prior to the actual date of a trial de novo, a nonappealing party may serve upon the appealing party a written offer of compromise.

(b) In any case in which an offer of compromise is not accepted by the appealing party within ten calendar days after service thereof, for purposes of MAR 7.3, the amount of the offer of compromise shall replace the amount of the arbitrator's award for determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial de novo.

(c) A postarbitration offer of compromise shall not be filed or communicated to the court or the trier of fact until after judgment on the trial de novo, at which time a copy of the offer of compromise shall be filed for purposes of determining whether the party who appealed the arbitrator's award has failed to improve that party's position on the trial de novo, pursuant to MAR 7.3.

(2) If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

[2011 c 336 § 164; 2002 c 339 § 1; 1982 c 188 § 2; 1979 c 103 § 5.]

RCW 7.06.060

Costs and attorneys' fees.

(1) The superior court shall assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who voluntarily withdraws a request for a trial de novo if the withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

(2) For the purposes of this section, "costs and reasonable attorneys' fees" means those provided for by statute or court rule, or both, as well as all expenses related to expert witness testimony, that the court finds were reasonably necessary after the request for trial de novo has been filed.

(3) If the prevailing party in the arbitration also prevails at the trial de novo, even though at the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.

[2002 c 339 § 2; 1979 c 103 § 6.]

MASTERS LAW GROUP
April 10, 2013 - 3:27 PM

Transmittal Letter

Document Uploaded: 437929-Respondent's Brief.pdf

Case Name: Hernandez v. Stender

Court of Appeals Case Number: 43792-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Shelly Windsby - Email: shelly@appeal-law.com