

FILED

AUG 21 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 323633

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

Michael J York

Plaintiff/Appellant

v.

CSL Plasma Inc f/k/a ZLB Plasma a foreign corporation

Defendants/Respondents

ON SUMMARY JUDGMENT FROM SUPERIOR COURT OF
WASHINGTON
FOR SPOKANE COUNTY

(Hon. Annette S. Plese) Case No. 132042651

BRIEF OF APPELLANT

Michael J York Pro Se, Appellant
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ORIGINAL

FORM 6. BRIEF OF Michael J York
Case # 323633 Court of Appeals
Dated this 1st day of August, 2014

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Assignments of Error

No.1 - Plaintiff was and is timely. The Superior Court of Washington for Spokane County erred in entering the order granting CSL Plasma Inc. Motion for Summary Judgment on February 7, 2014. See RCW 4.16.350. Therefore Plaintiff should have up to 8 years to file a civil action for damages. This case is tolled upon fraud.

No 2 - Defendants submitted no real evidence. The documents were falsified, the quoted statements from the Plaintiffs responses and doctor reports were falsified by the defendants exhibiting intentional concealment. The court erred when they did not review the evidence to determine timeliness. CR60 should rule to vacate the Summary Judgment.

No. 3 - A Physician is mandatory at defendant's facility according to FDA rules. Court did agree this is a medical malpractice.

No 4 - Superior court Local rules apply. Plaintiff was timely when sending correspondences. The court erred when Defendant was not timely with their Motion for summary judgment and did not strike the Motion from the Motion calendar permanently.

No 5 - The court erred when Defendant did not disprove every point of claim or demand Defendant to participate in the discovery process.

No 6 - February 3, 2014 to “Defendant’s Supplemental Reply in Support of Motion for Summary Judgment and Opposing Plaintiff’s Motion to strike Hearing” was not received by Plaintiff. The court erred when they allowed the reply to be submitted to the court.

Issues Pertaining to Assignments of Error

No. 1 - Plaintiff filed a personal injury-medical mal practice complaint. (See exhibit C)(CP)PAGE 58_ RCW 4.16.350 also (CP) PAGE 35_ and page 58___#1. Therefore Plaintiff should have up o the 8 years to file a civil action for damages. Plaintiff discovered in late 2013

case # 11-2-00284-0 (CP)(Page 63-64 and 65) See specifically: (CP)

Page 56---No. 7. (CP) page 35_#1_Line 16 – Haslund v Seattle, 86

Wn2d 607,547 P2d 1221 (1976) (RP) page 9 line 6 thru 25 and (RP)

page 10 line 1 thru 12 . In Washington the statutory limitation period

begins to run at such time as the Plaintiff has the right to apply to court

for relief, (CP) Page 35 Line 12, DeYoung v Providence Med Ctr 136

Wn2d136 1998. Also it was argued that the repose provision in RCW

4.16.350(3) was unconstitutional. [This is talking about the within eight

year provision of RCW 4 16 350(3), Plaintiff is within the eight year

limit and is within the “or one year of the time the patient or his or her

representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission,[There were many omissions and concealments which lead to the delay of proper medical treatment.] which ever period expires later,” [This say that whichever period expires later is the period you would use for the time limits.] It was also argued that the repose provision in RCW4.16.350(3) violates the privileges and immunities clause of the Washington Constitution. The provision arbitrarily denies the benefit of the discovery rule to a small class of adult medical malpractice claimants who cannot reasonably discover their injuries within the specified time of the alleged negligent act or omission. [Again Plaintiff is within the 8 years and is within the one year of the time the patient or his or her representative discovered or reasonably should have discovered that the

injury or condition was caused by said act or omission, whichever period expires later.] Article 1, section 12 of the Washington State Constitution, provides that: “no law shall be passed granting any citizen, class of citizens , or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.”

From the court case:12 DeYoung v Providence Med Ctr, 136 WN2d

136 1998. “Tolling in the case of fraud or intentional concealment is reasonable because the certainty and protection from stale claims a repose statute provides should not be extended to benefit those who by their wrongful acts prevent timely filing of a cause of action. Cases where foreign bodies are present, present the clearest cases of malpractice with the result that evidentiary problems are of lesser concern than in other cases. Pre existing state law indicates that there is no bar to absolutely foreclosing a cause where one has been injured by medical malpractice.”

Quote (CP) page 60 #5 The specific risk causing the injury must have been disclosed to, known to and appreciated by, the plaintiff in order for primary assumption of risk to apply! (CP) page 60 #6 Plaintiff has followed the instructions of his medical doctors from his first visit through the present The type of injury the Plaintiff has contracted thorough defendants facilities, equipment, products or any other venue of CSL Plasma is very resistant to medication. (CP) page 60 #7 to end of #1 Plaintiff has searched for a cure for his injury. Plaintiff values his life and plans on continuing to find a cure. Plaintiff reserves the right to add defenses and claims that become apparent through the course of investigation and litigation. Plaintiff retains the right for a fair speedy trial. Plaintiff has cause to continue. Plaintiff can demonstrate equitable

title to the relief requested. (CP) page 59 and 60 #4 If a person has a preexisting condition (Example asthma) You are to apportion, if possible, between the condition or disability caused by this occurrence, and assess liability accordingly. If no apportionment can reasonably be made by you, then the defendant is liable for the entire damages. Haslund v Seattle, 86 Wn.2d 607, 547 P2d 1221 (1976).

(RP)page 11 Line 2 thru 11, also(CP)Page 35 + 37 Line 10 To be able to apply for relief, each element of cause of action must be susceptible of proof therefore each element of Plaintiff cause of action claim must be analyzed as to prove when discovery was made. Plaintiff has kept within the time limits. RCW 4.16.350(3) code states:

“{An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this

section, including to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, which ever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.}”(CP-59)

RCW 4.16.350 states “Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976, shall be commenced within three years of the act or omission”

[Notice this says “omission” here. The failure and omission of defendant to inform plaintiff of DNA modification, splicing, cloning and using diseases, bacteria and parasites for drug production and the Maddy vs CSL Plasma case #11-2-00284-0 circumstances, prolonged proper treatment for one of plaintiffs conditions] (RP 9)

“alleged to have caused the injury or condition, or”

[Notice that this RCW has the word “or” placed here}

“or one year of the time the patient or his or her representative discovered or reasonably should have discovered” [This date was August of 2013] “that the injury or condition was caused by said act or Omission” [Here is the word omission again, (CP) [page 26 #7]

“whichever period expires later,” [This says whichever period Expires later] ”except that in no event shall an action be commenced more than eight years provided, That the time for commencement of an action is tolled upon proof of fraud, after said act or omission”

[This action is within eight years. If you look at (CP) 78 It says “The discovery rule within RCW.350 requires plaintiffs to use diligence in discovering the basis for the cause of action” Plaintiff did use careful attention and diligence by traveling as far as Seattle, Arizona and Mexico to try to find someone knowledgeable in DNA modification, splicing, cloning and using diseases, bacteria and parasites for drug production with their cutting edge research and finally found a (RP 10 line 22) connection in late 2013. [This action is based upon proof of fraud and concealment and foreign bodies] intentional concealment, or presence of a foreign body [pictures of evidence of foreign bodies not

intended to have a therapeutic or diagnostic purpose or effect, until the date the patient's representative has actual knowledge of the act of fraud or concealment, to be able to apply for relief, each element of the cause of action must be susceptible of proof. Therefore, each element of Plaintiff cause of action claim must be analyzed as to prove when discovery was made. It is plain to see Plaintiff discovered in August 2013, Maddy v CSL Plasma case # 11-2- 00284-0. This case was the start of discovering the fraudulent activities of defendant which has lead Plaintiff on to other discoveries of blue marker dyes, blood filters etc...see (CP) Page 37 Line 18. See (RP) Page 10 Line 19-24 states only one source of information. (CP) (Pages 45 and 64-66) the breach of duty and connected it to the alleged negligent, intentional concealment of their contamination involvement. This may be examples

of “unclean hands”, when defendant did not disclose this information of the specific contaminant or bacteria or other experimental damage to Plaintiff, which made getting specific medical treatment impossible.

(RP) Page 10 line 19-24(CP) Page 38 LINE 16 and Page 58 and 59 #3,4,5 and 6. If you look at (RP) page 7 line 9-14 it says plaintiff's last contact with defendant was in June of 2009. This is because the defendant refused to answer his questions and locked plaintiff's phone number from calling their facilities. Discovery was made in late 2013 and (RP) page 8 says Plaintiff made filed his complaint in September of 2013 which is within the one year after discovery. (RP) page 13 line 9-11 linking to defendant (RP) page 12 Line 8-14. There are genuine issues, a summary judgment would not be right.

No. 2: CR 60 should rule this summary judgment to be vacated. (RP) Page 11 line 16-23 Doctors reports prove that the donor card and signatures are fakes, have been altered to hide the time period Plaintiff was in the program. and donor card date do not coincide with each other. (RP) Page 8 Line 22-5, Plaintiff tells of his injuries which were linked to defendant in late 2013. (CP) page 78 footnote “While true that question of when a patient or rep reasonably should have discovered that the injury was caused by medical negligence is normally an issue of fact.”. But when the facts are purposely hide from you it takes time to unravel the web. Many minds were put together to decide the facts and the doctor referenced in (CP) page 78 footnote had not determined the source of injury as of yet and the connection to the defendant did not occur until late 2013. Through examples of, “unclean

hands” and concealment by defendant, fraud, altering consent form,
wrong date on donor card, Defendants denial of letter written to
Plaintiffs doctor, (RP) page 12 line 1 thru 7 microscopic evidence of
foreign bodies not. Plaintiff was not informed of the dangers of
program and used as a test subject in a deadly experiment without his
knowledge or consent or of other cases related to his injuries. Plaintiff
discovered in late 2013, Maddy v CSL Plasma case # 11-2-00284-0.
(CP)(Page 63-64 and 65) which defendant did not inform plaintiff of the
similar circumstances and similar dates of service of the two cases. Late
2013 should be the date of discovery because of the concealment by
the defendant. Donor card is missing page 2, Rh is not listed, Anti -d
program not listed, wrong blood type listed, should be AB- not B-,
wrong dates. Also Dr. Wangs report that was submitted by Plaintiff did

not state and link between injuries and illness or include and details concerning Defendants accusations (CP) page 43. With presentation and review of the following documents see (CP) page 5 #10, page 6 #17, #18) it's plain to see the defendant is trying to conceal the truth by not making plaintiff aware of experimental procedure done to Plaintiff. Superior case #11-CV-0076-TOR, the fraudulent conflicting dates of injection reported at defendants facility. (CP) page 36 line 3 and the letter defendant wrote to Plaintiffs doctor (CP) Page 43 last paragraph dates 06/05/2009. The letter also stated defendant donated plasma at this time, also see (CP) page 10, Line 20 date 4/26/2009 which. Defendant states was the last plasma donation), the foreign bodies (CP) PAGE 37 LINE 6 as documented by plaintiff and his doctors, (CP) (pages 49-53) and the fraudulently altered or incomplete exhibits (CP)

page 19 and 21. Page 60 is the omitted page which defendants left out of their declaration and should be placed in between pages 29 and 30 to reflect the true submission by the plaintiff of Plaintiffs "Reply to defendants Answers and Affirmative Defenses and Denial of Defendants Claim for Attorney Fees".Dkt# 16 (CP) 55-61, The Defendants refusal to participate in the continuing discovery request.__(CP) (Page 71-72)___On (CP) PAGE 12____Footnotes#2 according to defendant Plaintiffs participation in the IRBC program lasted from April 22-26, 2009. Plaintiff also submitted a "Reply to defendants Answers and affirmative defenses", Dkt# 16 (CP) 55-61 in which he claims that he was a plasma donor through June 2009. This is the period in question as to what program the defendant was using him for between April and June 2009 according to Defendants (CP) PAGE

36_#3_ Exhibit (A) (from PAGE 43) are notes from one of Plaintiffs
physician proving the dates Plaintiff received injection and donated and
signed forms prior to the 05/01/09 injection but the forms submitted by
the defendants have a date of 04/22/09 which were not signed by the
plaintiff or dated by the plaintiff., Recent disclosures of new products,
the procedures used to make these products have only now made it
possible to link all the unknown, quoting a letter the physician received
from the defendant including the dates of 5/1/09/and 6/5/09. (CP) Page
49 and 52 show microscopic pictures of foreign bodies and (CP) 51
shows blue marker dye coming from a lesion as per(CP) PAGE 56_#11
and page 57_#17 . (CP) PAGE 36_#2_ RCW 7.70.050: (CP) Page
10__line 14 and (CP) PAGE 36 LINE 1)

On April 22, 2009 plaintiff did not sign an informed consent.

Defendants exhibit (2) "Informed consent"(of (CP) PAGE 21 and 36 Line 1) has been altered. Disclosures of the incurred injuries were not communicated to the defendant and Defendants exhibit (1) (of (CP) PAGE 19) was printed with a date of 4-27-09 and is only page one of a two page document. It would be more appropriate to print information from the 6-30-2009 date in order to reflect the dates the Plaintiffs was at CSL Plasma's facility seeing their Doctor. The alteration of forms is an example of "unclean hands" or another attempt to hide evidence by the defendant therefore presenting a clear case of fraud and therefore causing the document to become null and void. "Informed consent" has been altered (See the area after #7 of the Informed consent form of ZLB Plasma (CP) (PAGE 21.). Plaintiff was not informed of the danger.

(CP) Page ,36 LINE 1 (CP) PAGE 36 _#3_ Exhibit (A) (from PAGE 43) are notes from one of Plaintiffs physician contradicting Defendants statement of dates Plaintiff received injection and donated quoting a letter the physician received from the defendant including the dates of 5/1/09/and 6/5/09. As you can see these notes were printed on 02/15/2012 at which time the defendant was given his copy. Defendant also gave the wrong information about the ingredients of the injection they gave the plaintiff. (Plaintiff requested a copy of the original letter his physician received but never received or was given a copy of letter to his physician from the Defendant, upon his request which would also be an intentional concealment of evidence.) These examples of “unclean hands”, when defendant did not disclose this information which made getting specific medical treatment impossible. (CP) 56

Plaintiff denies the accuracy and completeness of the Donor information card. (CP) Page 4 ___#9 The experimental product development research of CSL Plasma support the accusation of unclean hands of the defendant because of the related symptoms of the plaintiff. Recent disclosure of new products and procedures to make these products confirm the accusation. (CP) Page 6 ___#18 Plaintiff invokes doctrine of res ipsa loquitor. The injuries and damages cannot be fully explained. Plaintiff could not link the injuries to the defendants actions until late 2013 and promptly filed suit. (CP) Page 11 ___ line 22 Statutes of limitations do not begin to run until a cause of action accrues. The cause of action was not determined until late in 2013. (CP) Page 56 ___#9 states defendants participation in experimental research.

No.3 - FDA Title 21 code of federal regulations part 640:

Additional standards for human blood and blood products; section

640.62, medical supervision: "A qualified licensed physician shall be on the premises when donor suitability is being determined, immunizations are being made, whole blood is being collected, and red blood cells are being returned to the donor."

(CP) PAGE 36_#4_RCW 4.16.350(1) states that " a person licensed by this state to provide health care or related services, including but not limited to... RCW 4.16.350 (2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment."

(CP) PAGE 36_#9_DR. Bridge was the physician in charge of treatment of the supposed red blood cell Injections. "A Treating Physician was mandatory" at defendant's facility according to FDA.

RCW 4.16.350 "Action for injuries resulting from health care or related

services-Physicians, dentists, nurses, etc.- Hospitals, clinics, nursing homes, etc” RCW 4.16.350 (1) “A licensed physician, nurse employee”

No.4_(CP) PAGE__67 #2 and Page 76 __A__ Local Court

rules should apply for time limits on service. Plaintiff was timely on all mailings and filing. Defendant was not timely on their filings or appearances according to the three court dates of ,01/10/2014, 01/17/2014 and 01/24/2014. Plaintiff appeared at all. The final hearing of 02/07/2014 Plaintiff was informed at the 01/17/2014 that the Judge would not have time to listen to Defendants Summary judgment until late August but the defendant reschedules it for 02/07/2014 which did not give the Plaintiff the time needed to prepare for the summary judgment defense. This would be Plaintiff's fourth time appearing for this summary Judgment while the Defendant did not appear for any of

the hearings or joint conference hearings for discovery. The Motion should have been stricken from the calendar and not allowed to be heard because of the errors of the Defendants attorney in filing their motion and not adhering to the time limits for four times. (RP) Page 3 Line 23 thru 25 and Page 3 line 1-4 and Page 5 Line 1 thru 5 also line 25. Local Court Rules can govern many details—for instance, the number of days to respond to a motion. While some may allow 11 days for responding documents the Superior Court Spokane County LCR 56 states, in its last sentence: “In the event a motion for summary judgment, partial summary judgment or dismissal is to be argued, counsel for the moving party is required to comply with the requirements of notice in LCR 40 (b) (10). which states: The Note for Hearing/Issue of Law.. any responding documents must be served and filed at least seven days before hearing.” (See Dkt # 26 (CP) 113-142.) “But the motion must be filed 28 days

prior to the hearing and to inform the opposing party.

No. 5_ Every point of claim needs to be disproved by defendant. before summary judgment can be granted. Defendant failed to appear and to participate in the case status conference on January 17,2014 (CP) page 83)Defendant also refused to meet to negotiate or schedule a joint conference meeting (CP) Page 92, 104, 111 Defendant also failed to appear and did not call in ready for summary judgment hearings which the defendant scheduled on January 10, 2014, (CP) page 32, 123, 125, 127, January 24, 2014 (CP) Page 80, 121, Plaintiff's Personal injury- medical mal practice claim is based upon the reckless conduct of Defendant. [See (CP) page 62-65, dates of damages of another donor from the defendants same Spokane facility.] Plaintiff has tried to negotiate with defendant without cooperation.

See (CP) page 71 and 72, for continuing court discovery. _To be able to apply for relief, Haslund v Seattle, 86 Wn.2d 607, 547 P2d 1221 (1976)

each element of the cause of action must be susceptible of proof.

(CP page 35-37) Therefore, each element of Plaintiff cause of action claim must be analyzed as to prove when discovery was made. Plaintiff has kept within the time limits and every element of the cause need to be addressed This case is soiled in fraud, intentional concealment and foreign bodies. The timeliness of this suit is proven in the #1 assignment of error. (CP page 35-37)

No. 6 - (Dkt. N0. 27) “Defendant’s Supplemental Reply in Support of Motion for Summary Judgment and Opposing Plaintiff’s Motion to strike Hearing” February 3, 2013 was never received by the Plaintiff and should not have been reviewed by the Honorable

Judge. It was not presented in a timely fashion to the Plaintiff prior to the 8 AM February 7, 2014 case status conference and the 11 AM February 7, 2014 Defendants Summary Judgment (4TH HEARING of the Defendants Summary Judgment of which 3 court dates the defendant did not appear. Defendant's attorney tried to make the plaintiff miss each hearing by leading Plaintiff into believing there was not a court date set. Plaintiff appeared for the January 10, 2014, January 17, 2014, January 24, 2014 and the February 7, 2014 dates. The defendant made the errors causing a burden on the court and the plaintiff. See (Dkt No.26) attached documents (CP) pages 113 thru 142. See LCR 56. (CP) Page 144 Line 3 states hearing date was ultimately determined by the Court, but this was after Plaintiff's attorney had failed to appear 3 times prior. The defendant's

summary judgment should have been stricken since defendant did not appear for the hearings scheduled on January 10, 2014 , January 17, 2014 and January 24, 2014.(See Letter dated January 9, 2014 (CP) page 119 last sentence) “This will also confirm that there will be no hearing this Friday, January 10, because this date was not on Judge Cozza’s calendar and you had no working copies of our motion papers.”

This hearing was to be before the Honorable Judge Annette Plese and not Honorable Judge Cozza per court document. (CP) page 127 and 125. That was the error made by the defendant’s Attorney and the motion should be stricken. The attorney then made a court date with Honorable Judge Cozza for the 24th of January to hear the motion and then did not appear for the court date and then proceeded to make another court date with Honorable Judge Annette Pease after receiving a

letter from the judge telling the attorney that she was the assigned Judge even though Plaintiff had sent the defendant and their attorney notice of that fact on October 23, 2013. (See (CP) pages 132 thru 138 and (RP) Page** 5- Line 1 thru 5) Defendant attorney stated "I did not catch that you would be the judge assigned to this case, and that was my mistake, (Defendants attorneys mistake) (RP) Page**6- Line 7 thru 8.

B Statement of the Case

The court is here to decide whether the defendant is entitled to Summary Judgment as a matter of law. Plaintiff is and was timely in all matters. I am here today to prove Defendants exhibited intentional concealment of facts, documents and evidence and hindered the discovery process which exhibits unclean hands and under Washington RCW 4.16.350 (3) we are timely. With presentation and review of the

following documents it is plain to see the defendant is trying to conceal the truth by not making plaintiff aware of Superior case # 11-CV-0076-TOR, the falsified dates of injection at defendants facility and the letter defendant wrote to Plaintiffs doctor, the foreign bodies as documented by plaintiff and his doctors, the altered or incomplete exhibits (CP) page 19 and 21 and page 60 is the omitted page which defendants left out of Plaintiffs declaration which should be placed in between (CP) pages 29 and 30 to reflect the true submission by the Plaintiff of his "Reply to Defendants Answers and Affirmative Defenses and Denial of Defendants Claim for Attorney Fees". (Also financial Burden)The Defendants refusal to participate in the continuing discovery request. A Treating Physician was mandatory at defendants facility according to FDA rules. Superior court Local rules apply to

Superior court time limits. Every point of claim needs to be disproved by defendant before summary judgment can be granted. Defendant failed to appear and to participate in the case status conference on January 17,2014, Defendant also refused to meet to negotiate or schedule a conference meeting Defendant also failed to appear and did not call in ready for three summary judgment hearings and joint status conference which the defendant scheduled on January 10, 2014, January 17, 2014 and January 24, 2014.

C. Summary of Argument

(CP) Page 35, #1 and 37 In Washington the statutory limitation period begins to run at such time as the Plaintiff has the right to apply to court for relief. Haslund v Seattle, 86 Wn.2d 607, 547 P2d 1221 (1976) Therefore Plaintiff should have up to the 8 years to file a civil action for

damages. (CP) page 35, DeYoung v Providence Medical Center, 136

WN2d 136 (1998) It was argued that the eight year repose provision in

RCW4.16.350(3) was unconstitutional. We are under the eight year provision so should be granted the dismissal of the summary judgment.

RCW 4.16.350(3) code states: “an entity, whether or not incorporate, facility, or institution employing one or more persons described in subsection (1) of this section, including but not limited to a hospital, clinic, health maintenance organization, or nursing home, or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later....” [Please Note: This says WHICH EVER PERIOD EXPIRES LATER] “Provided that the time for commencement of an action is tolled upon proof of fraud, intentional

concealment or the presence of the foreign body, the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages."

(CP) Page 39 Michak v Transnation Title Insurance Company, 148

Wn.2d 788, 64 P.3d 22 (2003). Grant V American Red Cross NO99-

CV-60,745A.2d.316(2000), contraction of hepatitis from blood supply.

Stewart V Rudner 84N.W.2d,816 Mich.1957- Non disclosure

of process, Andrews v Sect of "The court is here to decide whether the

moving party is entitled to Summary Judgment as a matter of law. (CP)

page 39 Health and Human Services 564F,3d,1367 Fed.cit 2004,

vaccine injection injury. Facts are in dispute in this case and discovery

had not been completed. Summary judgment is not appropriate.(CP)

page 39 Chelan County Deputy Sheriffs Association v Chelan County

109 Wn.2d 282,745 P.2d 1 (1987). If it is found that the fact of any

damage actually occurring is undecided then possibly this civil action

may be deemed “premature (CP) 39 Lucey v. Law Offices of Pretzel

& Stouffer, Chartered, 301 Ill.App.3d 349,703 N.E.2d 473, 234 Ill

Dec. 612 (1 st Dist. 1998) and Bartholomew v. Crockett, 131 Ill.App.3d

456, 475 N.E.2d 1035,86 Ill Dec.656 (1 st Dist. 1985) Maddy, Plaintiff

v CSL Plasma, Inc., Defendant (11-200284-0) a medical mal practice

personal injury lawsuit. Involving the same facility, same time frame

and some related injuries.. (11-CV-0076-TOR) Exhibit B (CP)

(PAGE_45) The Plaintiff was timely in filing suit because the cause of

injuries were being concealed by the defendant and because of the

tampering of evidence by the defendant and discovery of foreign body

according to: RCW 4.16.350(3) codeProvided that the time for

commencement of an action is tolled upon proof of fraud, intentional concealment or the presence of the foreign body, the patient or the patient's representative has one year from date of the actual knowledge in which to commence a civil action for damages. The Plaintiffs rights violated when the defendant tampered with evidence, and concealed the deadly substances they injected into the plaintiff.

D. Argument

Plaintiff is timely according to RCW 416.350. Plaintiff asserts this is a claim for injuries resulting from the breach of duty of CSL Plasma and or breach of contract. According to FDA rules Title 21 of the code of federal regulations part 640 CSL Plasma has a qualified physician performing their services who was Dr Bridge who was in

charge of Plaintiff's care. Plaintiff denies that RCW 7.70.020 is the only RCW code pertaining to Plaintiffs Complaint and claims that RCW code 4.16.350 pertains to injuries resulting from healthcare providers or related services. See (Exhibit B) whereas information gathered in late 2013 reveals a filed personal injury mal-practice medical # 362 tort filing of Maddy vs CSL Plasma a related case of a staphylococcus aureus bacteria contracted during the same time frame Plaintiff was treated at CSL Plasma as one of the injuries. To reasonably prove the injury's connections discovered in late 2013 so claim for injury is timely. Defendant claims that Plaintiff participation lasted from April 22-26, 2009 but Plaintiff's doctor Wang received a letter from Defendant which the information was included in the medical records referring to the participation in the Anti-D program in May and June of

2009 of which Defendant claims there are no records for May and June.

The presence of the foreign body materials were not identified until late

2013 when Plaintiff's condition was related to a breach in duty and or a

breach in contract The symptom's have continued in increasing

severability since 2009 and continued through the present but were

only connected to a breach of duty in late 2013. (See Exhibit A)

Plaintiff filed #13-2-04265-1 as a personal injury-mal practice (See

exhibit C) Therefore RCW 4.16.350 should apply. " based upon alleged

professional negligence shall be commenced within three years of the

act or omission alleged to have caused the injury or condition, or one

year of the time the patient or his or her representative discovered or

reasonably should have discovered that the injury or condition was

caused by said act or omission, which ever period expires later, except

that in no event shall an action be commenced more than eight years

after said act or omission: provided, that the time for commencement of

an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages." (CP page 35-37)

RCW 4.16.350 and RCW 4.56.250 In Washington the statutory

limitation period begins to run at such time as the Plaintiff has the right

to apply to court for relief. Haslund v Seattle, 86 Wn.2d 607, 547 P2d

1221 (1976). To be able to apply for relief, each element of the cause

of action must be susceptible of proof. Therefore, each element of

Plaintiff cause of action claim must be analyzed as to prove when

discovery was made. Plaintiff has kept within the time limits.

E. Conclusion

The court is here to decide whether the defendant is entitled to Summary Judgment as a matter of law. According to the content above it is clear to see that the defendants summary judgment is not supported by the evidence Plaintiff has cause and is timely in his Filings of this claim according to RCW 4.16.350 and other laws and cases as sited within. Even if the three year statue should apply Plaintiff has one year from the date of the actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; or the injury or

condition was caused by said act or omission, which ever period expires later but not over eight years. CR 60 is requested to vacate summary judgment. Plaintiff has proof that defendant has intentionally concealed evidence and committed fraud. Plaintiff found most of the related evidence and foreign bodies in late 2013 through my own research, Microscopic research and related cases found in late 2013. As for the timely discovery being reasonable and the fact that the processes and medical devices and knowledge of the work CSL Plasma is involved in and used on Plaintiff is cutting edge. Including DNA splicing, cloning and using deadly diseases as tools for drug discoveries(CP-57 #9)

while totally disregarding the human rights of life. CSL Plasma is the
for most expert in the fields of biomedicine which made finding
information and help impossible. 12 DeYoung v Providence Medical
Center, 136 WN2d 136 1998). “Tolling in the case of fraud or
intentional concealment is reasonable because the certainty and
protection from stale claims a repose statute provides should not be
extended to benefit those who by their wrongful acts prevent timely
filing of a cause of action. Cases where foreign bodies are present,
present the clearest cases of malpractice with the result that evidentiary
problems are of lesser concern than in other cases. Pre existing state law
indicates that there is no bar to absolutely foreclosing a cause where one
has been injured by medical malpractice.”

F. Appendix _____

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Haslund v Seattle, 86 Wn.2d 607, 547 P2d 1221 (1976). (CP) PAGE 35

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Michak v Transnation Title Insurance Company, 148 Wn.2d 788, 64

P.3d 22 (2003).

Grant V American Red Cross NO99-CV-60,745A,2d.316(2000),

contraction of hepatitis from blood supply. (CP page 39)

Stewart V Rudner 84N.W.2d,816 Mich.1957- Non disclosure of

process, (CP page 39) The court is here to decide whether the moving party is entitled to Summary Judgment as a matter of law.

Chelan County Deputy Sherriffs Association v Chelan County 109

Wn.2d 282,745 P.2d 1 (1987) (CP page 39)

Lucey v. Law Offices of Pretzel & Stouffer, Chartered, 301 Ill.App.3d 349,703 N.E.2d 473, 234 Ill Dec. 612 (1 st Dist. 1998) (CP page 39)

Bartholomew v. Crockett, 131 Ill.App.3d 456, 475 N.E.2d 1035,86 Ill Dec.656 (1 st Dist. 1985) (CP page 39)

Andrews v Sect of Health and Human Services 564F,3d,1367 Fed.cit

2004, vaccine injection injury. Facts are in dispute and discovery had not been completed. Summary judgment is not appropriate.

Constitutional Provisions

It was argued that the repose provision in RCW4.16.350(3) was unconstitutional. It violates the privileges and immunities clause of the Washington Constitution. The provision arbitrarily denies the benefit of the discovery rule the small class of adult medical malpractice claimants who cannot reasonably discover their injuries within the specified time of the alleged negligent act or omission. Article 1, section 12 of the Washington State Constitution, provides that “[no law shall be passed granting any citizen, class of citizens , or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.]”

Statutes

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GOD

Date August 20, 2014

8/20/14

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J York", written over a horizontal line.

Michael J York, Pro Se (Appellant)

48 page Brief + cover page + service

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing Aug 20, 2014 Brief of Michael J. Wink
to Bennett Baggett Freedom Attorney for CSL, Phoenix AZ 85015
at 601 Union St Suite 1520, Suite 1520, Suite 1520, Phoenix AZ 85015, postage prepaid, on
[date] Aug 21, 2014

C. Kohler
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct:

Spokane WA 99201 (Date and Place)
C. Kohler (Signature)