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STATE OF WASHINGTON

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No. 81195-4

BY RONALD R. CARPENTER SUPREME COURT
OF THE STATE OF WASHINGTON

CLERK

(Court of Appeals No. 58831-I)

FILED
APR 22 2008
CLERK OF SUPREME COURT
STATE OF WASHINGTON

CASCADE ORTHOPAEDICS, a partnership,

Appellant/Respondent,

vs.

JOSIE ARMANTROUT and WARREN ARMANTROUT, husband and
wife and the marital community composed thereof,

Respondents/Petitioner.

**RESPONDENT CASCADE ORTHOPAEDIC'S ANSWER
TO WASHINGTON STATE TRIAL LAWYERS ASSOCIATION
FOUNDATION AMICUS CURIAE MEMORANDUM
IN SUPPORT OF REVIEW**

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Respondent Cascade Orthopaedics submits the following memorandum in answer to the memorandum of amicus curiae Washington State Trial Lawyers Association Foundation (Amicus) under **RAP 10.3(f)**.

I. INTRODUCTION

In its memorandum in support of review, Amicus contends this Court should accept review in order to expand the class of second-tier beneficiaries under **RCW 4.20.020**, by diluting the rules of construction for the wrongful death statutes and by expanding the definition of "dependent for support." As with the claims of petitioners Josie and Todd Armantrout, Amicus's position calls essentially for a re-writing of the wrongful death statute, a function this Court may not properly perform. The Armantrouts' and Amicus's policy arguments are better directed to the Legislature. Review is not warranted in this case.

II. ANSWER TO AMICUS MEMORANDUM

Amicus is correct that past Washington appellate decisions have not considered the question of whether the gratuitous provision of services by an adult child to his or her parents qualify the parents as wrongful death beneficiaries upon the child's death. There is a simple reason for this: these past decisions have been explicitly clear in their holdings that the phrase

“dependent for support” means financial dependence, which, in turn, means the payment of money. As this Court recently held in *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004):

The court of this state have long and repeatedly held, causes of action for wrongful death are strictly a matter of legislative grace and are not recognized in the common law. The legislature has created a comprehensive set of statutes governing who may recover for wrongful death and survival, and there is no room for this court to act in that area. It is neither the function nor the prerogative of courts to modify legislative enactments.

The legislature has identified the statutory beneficiaries. While we may agree that the value parents place on children in our society is no longer associated with **the child’s ability to provide income to the parents**, the legislature has defined who can sue for the wrongful death and injury of a child and we cannot alter the legislative directive. The change the plaintiffs seek must come from the legislature rather than this court.

Id. at 390 (internal citations and quotation marks omitted) (emphasis added).

The above quotation establishes two things. One, it establishes that in order for a parent to qualify as a second-tier beneficiary and recover for the wrongful death of his or her adult child, the adult child must have provided the parent with income. This is what financial dependence means. The fact

that a parent claims the services an adult child gratuitously provided had economic value is simply not enough. This Court need not accept review to decide whether dependency under **RCW 4.20.020** can be established by the mere provision of services because the issue is so clearly foreclosed by prior decisions.

Two, it also establishes that any decision to expand the class of second-tier beneficiaries must come from the Legislature, and not this Court. To this end, certain members of the Legislature recently made efforts to expand the circumstances under which a parent may recover for the wrongful death of his or her adult child. *See* **SB 6696** and **HB 1873** (attached to this memorandum at **Tab 1**). Each of these bills proposed to define financial dependence as including both actual monetary contributions and the receipt of services having economic value, the very change Amicus and the Armantrouts ask this Court to effect. However, neither **SB 6696** or **HB 1873** passed. If the Legislature was unable to reach consensus about the expansion of the wrongful death statutes, it seems presumptuous for Amicus and the Armantrouts to tell this Court it should know better than the Legislature.

Further, the Legislature's proposed definitions of financial dependence demonstrates that, under current law, proof of financial dependence is limited to monetary contributions. Amicus suggests that the provision of services has been considered in two prior cases, but Amicus overstates the holdings of those cases. In *Cook v. Rafferty*, 200 Wash. 234, 93 P.2d 376 (1939), the court did not uphold a finding of dependency based on the provision of services, but rather held that the evidence demonstrated that the parents "suffered a pecuniary loss by reason of [their daughter's] death." *Id.* at 240 (emphasis added). In *Masunaga v. Gapasin*, 57 Wn. App. 624, 790 P.2d 171, rev. denied, 115 Wn.2d 1012 (1990), the parents conceded they were not financially dependent upon their deceased adult son and presented no evidence they were dependent upon any services he might have provided. *Id.* at 627. Neither of these decisions create any issue for this Court to resolve by accepting review of the Armantrouts' petition.

There is also no need, or basis, for this Court to review the question of whether the wrongful death statutes should be strictly or liberally construed when determining whether a particular individual is a statutory beneficiary. In their petition for review, the Armantrouts presented only two potential issues for review: (1) whether the provision of services having

economic value may be considered by the trier of fact in determining whether a parent was financially dependent upon his or her adult child for purposes of a wrongful death claim under RCW 4.20.020 in the absence of any first tier beneficiaries; and (2) whether the Court of Appeals' decision prejudiced their ability to present their damages case and whether remand requires retrial on damages or the question of whether the Armantrouts were dependent upon their daughter for support. *Petition at 2*. The Armantrouts did not identify any issue concerning the proper standard of statutory construction for review in their petition.

An argument raised only by amicus should not be considered by this Court. *Coburn v. Seda*, 101 Wn.2d 270, 279, 677 P.2d 173 (1984); *WSBA v. Great Western Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 60, 586 P.2d 870 (1978). As this Court has previously held:

It is further well established that appellate courts will not enter into the discussion of points raised only by amici curiae. . . . [W]e think the case must be made by the parties litigant, and its course and the issues involved cannot be changed or added to by 'friends of the court.'

Long v. Odell, 60 Wn.2d 151, 154, 372 P.2d 548 (1962) (internal citations and quotation marks omitted). Here, the "case . . . made by the parties

litigant” is defined solely by the issues presented for review by the Armantrouts, which does not include any issue related to the appropriate rule of statutory construction.

Amicus’s argument also fails on its merits. This Court may not effectively expand the class of second-tier beneficiaries under the guise of construing the wrongful death statutes, whether those statutes are given a strict or liberal construction. “It is well settled that courts will neither read into a statute matters which are not there nor modify a statute by construction.” *Rhoad v. McLean Trucking Co., Inc.*, 102 Wn.2d 422, 426, 686 P.2d 483 (1984).

The “construction” the Armantrouts and Amicus wish this Court to give the wrongful death statutes involves an expansion of the class of second-tier beneficiaries. Their disagreement with the Legislature’s decision to allow the parent to recover for the death of an adult child only where that parent was substantially financially dependent does not warrant review. Courts should not “question the wisdom of a statute even though its results seem unduly harsh.” *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

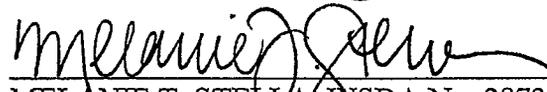
III. CONCLUSION

Cascade Orthopaedics requests that this Court deny the Armantrouts' petition for review.

Respectfully submitted this 22 day of April, 2008.

BURGESS FITZER, P.S.


STEVEN F. FITZER, WSBA No. 6792 #28736 for:


MELANIE T. STELLA, WSBA No. 28736
*Attorneys for Respondent Cascade
Orthopaedics*

TAB 1

ENGROSSED THIRD SUBSTITUTE HOUSE BILL 1873

State of Washington 60th Legislature 2008 Regular Session .

By House Appropriations (originally sponsored by Representatives Ormsby, Haler, Pedersen, Wood, VanDeWege, Campbell, Flannigan, Kessler, Williams, and Lantz)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to actions for wrongful injury or death; amending
2 RCW 4.20.020, 4.20.046, 4.20.060, and 4.24.010; creating new sections;
3 and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.20.020 and 2007 c 156 s 29 are each amended to read
6 as follows:

7 (1) Every (~~such~~) action under RCW 4.20.010 shall be for the
8 benefit of the ((~~wife, husband~~)) spouse, state registered domestic
9 partner, ((~~child~~)) or children, including stepchildren, of the person
10 whose death shall have been so caused. If there ((~~be~~)) is no ((~~wife,~~
11 husband)) spouse, state registered domestic partner, or ((~~such~~) child
12 ((~~or children, such~~)), the action may be maintained for the benefit of:
13 (a) The parents((~~r~~)) of a deceased adult child if the parents are
14 financially dependent upon the adult child for support or if the
15 parents have had significant involvement in the adult child's life; or
16 (b) an individual who is the sole beneficiary of the decedent's life
17 insurance and has had significant involvement in the decedent's life.
18 If there is no spouse, state registered domestic partner, child,
19 parent, or such life insurance beneficiary, the action may be

1 maintained for the benefit of sisters((τ)) or brothers((τ)) who ((~~may~~
2 ~~be~~)) are financially dependent upon the deceased person for support((τ)
3 ~~and who are resident within the United States at the time of his~~
4 ~~death~~)).

5 In every such action the jury may ((~~give such~~)) award economic and
6 noneconomic damages as((τ)) under all circumstances of the case((τ))
7 may to them seem just.

8 (2) For the purposes of this section:

9 (a) "Financially dependent for support" means substantial
10 dependence based on the receipt of services that have an economic or
11 monetary value, or substantial dependence based on actual monetary
12 payments or contributions; and

13 (b) "Significant involvement" means demonstrated support of an
14 emotional, psychological, or financial nature within the relationship,
15 at or reasonably near the time of death, or at or reasonably near the
16 time of the incident causing death.

17 **Sec. 2.** RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as
18 follows:

19 (1) All causes of action by a person or persons against another
20 person or persons shall survive to the personal representatives of the
21 former and against the personal representatives of the latter, whether
22 such actions arise on contract or otherwise, and whether or not such
23 actions would have survived at the common law or prior to the date of
24 enactment of this section(~~(:---PROVIDED, HOWEVER, That)~~)).

25 (2) In addition to recovering economic losses, the personal
26 representative ((~~shall only be~~)) is entitled to recover on behalf of
27 those beneficiaries identified under RCW 4.20.020 any noneconomic
28 damages for pain and suffering, anxiety, emotional distress, or
29 humiliation, personal to and suffered by ((α)) the deceased ((~~on behalf~~
30 of these beneficiaries enumerated in RCW 4.20.020, and such)) in such
31 amounts as determined by a jury to be just under all the circumstances
32 of the case. Damages under this section are recoverable regardless of
33 whether or not the death was occasioned by the injury that is the basis
34 for the action.

35 (3) The liability of property of a husband and wife held by them as
36 community property and subject to execution in satisfaction of a claim
37 enforceable against such property so held shall not be affected by the

1 death of either or both spouses; and a cause of action shall remain an
2 asset as though both claiming spouses continued to live despite the
3 death of either or both claiming spouses.

4 ~~((+2))~~ (4) Where death or an injury to person or property,
5 resulting from a wrongful act, neglect or default, occurs
6 simultaneously with or after the death of a person who would have been
7 liable therefor if his death had not occurred simultaneously with such
8 death or injury or had not intervened between the wrongful act, neglect
9 or default and the resulting death or injury, an action to recover
10 damages for such death or injury may be maintained against the personal
11 representative of such person.

12 **Sec. 3.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
13 as follows:

14 (1) No action for a personal injury to any person occasioning death
15 shall abate, nor shall such right of action ~~((determine))~~ terminate, by
16 reason of ~~((such))~~ the death~~((r))~~ if ~~((such))~~ the person has a
17 surviving ~~((spouse, state registered domestic partner, or child living,~~
18 ~~including stepchildren, or leaving no surviving spouse, state~~
19 ~~registered domestic partner, or such children, if there is dependent~~
20 ~~upon the deceased for support and resident within the United States at~~
21 ~~the time of decedent's death, parents, sisters, or brothers; but such~~
22 ~~action may be prosecuted, or commenced and prosecuted, by the executor~~
23 ~~or administrator))~~ beneficiary in whose favor the action may be brought
24 under subsection (2) of this section.

25 (2) An action under this section shall be brought by the personal
26 representative of the deceased~~((r))~~ in favor of ~~((such))~~ the surviving
27 spouse or state registered domestic partner, ~~((or in favor of the~~
28 ~~surviving spouse or state registered domestic partner))~~ and ~~((such))~~
29 children~~((r or if))~~. If there is no surviving spouse ~~((or))~~, state
30 registered domestic partner, ~~((in favor of such child))~~ or children,
31 ~~((or if no surviving spouse, state registered domestic partner, or such~~
32 ~~child or children, then))~~ the action shall be brought in favor of the
33 decedent's: (a) Parents~~((r))~~ if the parents are financially dependent
34 upon the decedent for support or if the parents have had significant
35 involvement in the decedent's life; or (b) sole beneficiary under a
36 life insurance policy, if the beneficiary is an individual who had a
37 significant involvement in the decedent's life. If there is no

1 surviving spouse, state registered domestic partner, child, parent, or
2 such life insurance beneficiary, the action shall be brought in favor
3 of the decedent's sisters((7)) or brothers who ((may be)) are
4 financially dependent upon ((such person)) the decedent for support((7
5 and resident in the United States at the time of decedent's death)).

6 (3) In addition to recovering economic losses, the persons
7 identified in subsection (2) of this section are entitled to recover
8 any noneconomic damages personal to and suffered by the decedent
9 including, but not limited to, damages for the decedent's pain and
10 suffering, anxiety, emotional distress, or humiliation, in such amounts
11 as determined by a jury to be just under all the circumstances of the
12 case.

13 (4) For the purposes of this section:

14 (a) "Financially dependent for support" means substantial
15 dependence based on the receipt of services that have an economic or
16 monetary value, or substantial dependence based on actual monetary
17 payments or contributions; and

18 (b) "Significant involvement" means demonstrated support of an
19 emotional, psychological, or financial nature within the relationship,
20 at or reasonably near the time of death, or at or reasonably near the
21 time of the incident causing death.

22 **Sec. 4.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
23 as follows:

24 (1) A ((mother or father, or both,)) parent who has regularly
25 contributed to the support of his or her minor child, ((and the mother
26 or father, or both, of a child on whom either, or both, are)) or a
27 parent who is financially dependent on a child for support or who has
28 had significant involvement in a child's life, may maintain or join
29 ((as a party)) an action as plaintiff for the injury or death of the
30 child.

31 (2) Each parent, separately from the other parent, is entitled to
32 recover for his or her own loss regardless of marital status, even
33 though this section creates only one cause of action((7 but if the
34 parents of the child are not married, are separated, or not married to
35 each other damages may be awarded to each plaintiff separately, as the
36 trier of fact finds just and equitable)).

1 (3) If one parent brings an action under this section and the other
2 parent is not named as a plaintiff, notice of the institution of the
3 suit, together with a copy of the complaint, shall be served upon the
4 other parent: PROVIDED, That notice shall be required only if
5 parentage has been duly established.

6 Such notice shall be in compliance with the statutory requirements
7 for a summons. Such notice shall state that the other parent must join
8 as a party to the suit within twenty days or the right to recover
9 damages under this section shall be barred. Failure of the other
10 parent to timely appear shall bar such parent's action to recover any
11 part of an award made to the party instituting the suit.

12 (4) In (~~such~~) an action under this section, in addition to
13 damages for medical, hospital, medication expenses, and loss of
14 services and support, damages may be recovered for the loss of love and
15 companionship of the child and for injury to or destruction of the
16 parent-child relationship in such amount as, under all the
17 circumstances of the case, may be just.

18 (5) For the purposes of this section:

19 (a) "Financially dependent for support" means substantial
20 dependence based on the receipt of services that have an economic or
21 monetary value, or substantial dependence based on actual monetary
22 payments or contributions; and

23 (b) "Significant involvement" means demonstrated support of an
24 emotional, psychological, or financial nature within the relationship,
25 at or reasonably near the time of death, or at or reasonably near the
26 time of the incident causing death.

27 NEW SECTION. Sec. 5. This act applies to all causes of action
28 filed on or after the effective date of this act.

29 NEW SECTION. Sec. 6. (1) On December 1, 2009, and every December
30 1st thereafter, the risk management division within the office of
31 financial management shall report to the house appropriations
32 committee, the house state government and tribal affairs committee, the
33 senate ways and means committee, and the senate government operations
34 and elections committee, or successor committees, on the incidents
35 covered by this act that involve state agencies.

1 (2) On December 1, 2009, and every December 1st thereafter, each
2 local government risk pool or local government risk management
3 division, or the equivalent in local governments, shall report to the
4 legislative body of the local government on the incidents covered by
5 this act that involve the local government.

6 (3) This section expires December 2, 2014.

--- END ---

SUBSTITUTE SENATE BILL 6696

State of Washington

60th Legislature

2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Fairley, Prentice, Kohl-Welles, Tom, Weinstein, Kline, McDermott, and Murray)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to actions for wrongful injury or death; amending
2 RCW 4.20.020, 4.20.046, 4.20.060, and 4.24.010; creating new sections;
3 and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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8 of the (~~wife, husband~~) spouse, state registered domestic partner,
9 (~~child~~) or children, including stepchildren, of the person whose
10 death shall have been so caused. If there (~~be~~) is no (~~wife,~~
11 ~~husband~~) spouse, state registered domestic partner, or (~~such~~) child
12 (~~or children, such~~), the action may be maintained for the benefit of:
13 (1) The parents(~~r~~) of a deceased adult child if the parents are
14 financially dependent upon the adult child for support or if the
15 parents have had significant involvement in the adult child's life; or
16 (2) an individual who is the sole beneficiary of the decedent's life
17 insurance and has had significant involvement in the decedent's life.
18 If there is no spouse, state registered domestic partner, child,
19 parent, or such life insurance beneficiary, the action may be

1 maintained for the benefit of sisters((~~7~~)) or brothers((~~7~~)) who ((~~may~~
2 ~~be~~)) are financially dependent upon the deceased person for support((~~7~~)
3 ~~and who are resident within the United States at the time of his~~
4 ~~death~~)).

5 In every such action the jury may ((~~give such~~)) award economic and
6 noneconomic damages as((~~7~~)) under all circumstances of the case((~~7~~)
7 may to them seem just.

8 For the purposes of this section, "financial dependence" includes
9 dependence based on the receipt of services that have an economic or
10 monetary value, or dependence based on actual monetary payments or
11 contributions.

12 **Sec. 2.** RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as
13 follows:

14 (1) All causes of action by a person or persons against another
15 person or persons shall survive to the personal representatives of the
16 former and against the personal representatives of the latter, whether
17 such actions arise on contract or otherwise, and whether or not such
18 actions would have survived at the common law or prior to the date of
19 enactment of this section((~~+ PROVIDED, HOWEVER, That~~)).

20 (2) In addition to recovering economic losses, the personal
21 representative ((~~shall only be~~)) is entitled to recover on behalf of
22 those beneficiaries identified under RCW 4.20.020 any noneconomic
23 damages for pain and suffering, anxiety, emotional distress, or
24 humiliation, personal to and suffered by ((a)) the deceased ((on behalf
25 of those beneficiaries enumerated in RCW 4.20.020, and such)) in such
26 amounts as determined by a jury to be just under all the circumstances
27 of the case. Damages under this section are recoverable regardless of
28 whether or not the death was occasioned by the injury that is the basis
29 for the action.

30 (3) The liability of property of a husband and wife held by them as
31 community property and subject to execution in satisfaction of a claim
32 enforceable against such property so held shall not be affected by the
33 death of either or both spouses; and a cause of action shall remain an
34 asset as though both claiming spouses continued to live despite the
35 death of either or both claiming spouses.

36 ((~~+2~~)) (4) Where death or an injury to person or property,
37 resulting from a wrongful act, neglect or default, occurs

1 simultaneously with or after the death of a person who would have been
2 liable therefor if his death had not occurred simultaneously with such
3 death or injury or had not intervened between the wrongful act, neglect
4 or default and the resulting death or injury, an action to recover
5 damages for such death or injury may be maintained against the personal
6 representative of such person.

7 **Sec. 3.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
8 as follows:

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10 shall abate, nor shall such right of action ~~((determine))~~ terminate, by
11 reason of ~~((such))~~ the death~~((r))~~ if ~~((such))~~ the person has a
12 surviving ~~((spouse, state registered domestic partner, or child living,~~
13 ~~including stepchildren, or leaving no surviving spouse, state~~
14 ~~registered domestic partner, or such children, if there is dependent~~
15 ~~upon the deceased for support and resident within the United States at~~
16 ~~the time of decedent's death, parents, sisters, or brothers, but such~~
17 ~~action may be prosecuted, or commenced and prosecuted, by the executor~~
18 ~~or administrator))~~ beneficiary in whose favor the action may be brought
19 under subsection (2) of this section.

20 (2) An action under this section shall be brought by the personal
21 representative of the deceased((r)) in favor of ((such)) the surviving
22 spouse or state registered domestic partner, ((or in favor of the
23 surviving spouse or state registered domestic partner)) and ((such))
24 children((, or if)). If there is no surviving spouse ((or)) state
25 registered domestic partner, ((in favor of such child)) or children,
26 ((or if no surviving spouse, state registered domestic partner, or such
27 child or children, then)) the action shall be brought in favor of the
28 decedent's: (a) Parents((r)) if the parents are financially dependent
29 upon the decedent for support or if the parents have had significant
30 involvement in the decedent's life; or (b) sole beneficiary under a
31 life insurance policy, if the beneficiary is an individual who had a
32 significant involvement in the decedent's life. If there is no
33 surviving spouse, state registered domestic partner, child, parent, or
34 such life insurance beneficiary, the action shall be brought in favor
35 of the decedent's sisters((r)) or brothers who ((may be)) are
36 financially dependent upon ((such person)) the decedent for support((r
37 and resident in the United States at the time of decedent's death)).

1 (3) In addition to recovering economic losses, the persons
2 identified in subsection (2) of this section are entitled to recover
3 any noneconomic damages personal to and suffered by the decedent
4 including, but not limited to, damages for the decedent's pain and
5 suffering, anxiety, emotional distress, or humiliation, in such amounts
6 as determined by a jury to be just under all the circumstances of the
7 case.

8 (4) For the purposes of this section, "financial dependence"
9 includes dependence based on the receipt of services that have an
10 economic or monetary value, or dependence based on actual monetary
11 payments or contributions.

12 **Sec. 4.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
13 as follows:

14 (1) A ((mother or father, or both,)) parent who has regularly
15 contributed to the support of his or her minor child, ((and the mother
16 or father, or both, of a child on whom either, or both, are)) or a
17 parent who is financially dependent on a child for support or who has
18 had significant involvement in a child's life, may maintain or join
19 ((as a party)) an action as plaintiff for the injury or death of the
20 child.

21 (2) Each parent, separately from the other parent, is entitled to
22 recover for his or her own loss regardless of marital status, even
23 though this section creates only one cause of action((, but if the
24 parents of the child are not married, are separated, or not married to
25 each other damages may be awarded to each plaintiff separately, as the
26 trier of fact finds just and equitable)).

27 (3) If one parent brings an action under this section and the other
28 parent is not named as a plaintiff, notice of the institution of the
29 suit, together with a copy of the complaint, shall be served upon the
30 other parent: PROVIDED, That notice shall be required only if
31 parentage has been duly established.

32 Such notice shall be in compliance with the statutory requirements
33 for a summons. Such notice shall state that the other parent must join
34 as a party to the suit within twenty days or the right to recover
35 damages under this section shall be barred. Failure of the other
36 parent to timely appear shall bar such parent's action to recover any
37 part of an award made to the party instituting the suit.

1 (4) In (~~such~~) an action under this section, in addition to
2 damages for medical, hospital, medication expenses, and loss of
3 services and support, damages may be recovered for the loss of love and
4 companionship of the child and for injury to or destruction of the
5 parent-child relationship in such amount as, under all the
6 circumstances of the case, may be just.

7 (5) For the purposes of this section, "financial dependence"
8 includes dependence based on the receipt of services that have an
9 economic or monetary value, or dependence based on actual monetary
10 payments or contributions.

11 NEW SECTION. Sec. 5. This act applies to all deaths occurring
12 before, on, or after the effective date of this act only if the cause
13 of action occurred within the limitation period set forth in RCW
14 4.16.080; no claims outside that period shall be revived or created as
15 a result of this act.

16 NEW SECTION. Sec. 6. (1) On December 1, 2009, and every December
17 1st thereafter, the risk management division within the office of
18 financial management shall report to the house appropriations
19 committee, the house state government and tribal affairs committee, the
20 senate ways and means committee, and the senate government operations
21 and elections committee, or successor committees, on the incidents
22 covered by this act that involve state agencies.

23 (2) On December 1, 2009, and every December 1st thereafter, each
24 local government risk pool or local government risk management
25 division, or the equivalent in local governments, shall report to the
26 legislative body of the local government on the incidents covered by
27 this act that involve the local government.

28 (3) This section expires December 2, 2014.

--- END ---

No. 81195-4

SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 58831-I)

CASCADE ORTHOPAEDICS, a partnership,

Appellant/Respondent,

vs.

JOSIE ARMANTROUT and WARREN ARMANTROUT, husband and
wife and the marital community composed thereof,

Respondents/Petitioner.

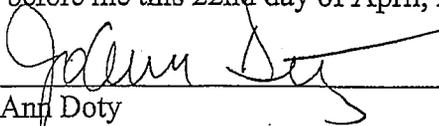
**AFFIDAVIT OF MAILING
RESPONDENT CASCADE ORTHOPAEDIC'S ANSWER
TO WASHINGTON STATE TRIAL LAWYERS ASSOCIATION
FOUNDATION AMICUS CURIAE MEMORANDUM
IN SUPPORT OF REVIEW**

Steven F. Fitzer, WSBA #6792
Melanie T. Stella, WSBA #28736

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Subscribed and sworn to before me this 22nd day of April, 2008.





JoAnn Doty
Notary Public in and for the State of
Washington, residing at Gig Harbor.
My Commission Expires: 3-2-09