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Washington State Supreme Court

MAY 14 2014
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Ronald R. Carpenter
Clerk

Supreme Court No. 90011-6

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

LEONARDO C. MARIANO, *pro se*

Appellant

v.

SWEDISH CARDIAC SURGERY

Respondent

APPELLANT'S REPLY

TO

**RESPONDENT'S ANSWER TO APPELLANT'S A) MOTION TO EXTEND AND
B) PETITION FOR REVIEW.**

Court of Appeals, Division 1, No. 68924-0-1

LEONARDO C. MARIANO, *pro se*

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May 13, 2014

A. REPLY TO RESPONDENT'S ANSWER TO MOTION FOR EXTENSION OF TIME.

The issue is when to file - on the date the petition is mailed or on the date it is received. Appellant relied on RAP 18.6 (b) which states that "*the paper is timely filed if mailed within the time permitted ...*" As a non-lawyer, however, Appellant failed to note RAP 18.6 (c) which states that "*... is timely filed if it is received ...*".

The Petition for Review was mailed February 10, 2014 but received on February 12, 2014, a two-day delay. Petitioner has admitted the oversight.

Under RAP 18.8 (b), the appellate court will extend the time "*only in extraordinary circumstances and to prevent a gross miscarriage of justice...*". Appellant now respectfully invokes this provision for the following reasons.

1. The Superior Court and the Court of Appeals dismissed this case with a summary judgment. Petitioner's main complaints of wrong diagnosis and unnecessary bypass were not addressed.

2. Summary judgment was not appropriate since there are several unresolved issues as graphically shown in the contrasting arguments by both parties

3. Appellant is a 83- year old retiree. With social security benefit as the only source of income, Petitioner could not afford to hire a lawyer nor a medical consultant. Petitioner is in poor health as a result of the unnecessary heart surgery.

4. In his Petition for Review and this Reply to Respondent's answers, Appellant has rebutted all arguments of the Court of Appeals for the dismissal of the case. The contrasting issues are now joined. Appellant prays that final judgment will be based on merits, not through the abbreviated trial of summary judgment.

B. REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW.

Except for a few general statements of law, Swedish did not rebut the positions taken by Appellant on the first three issues in the Petition for Review. With details already found in the Petition for Review, Appellant will just highlight, with a few exceptions for emphasis, his arguments in the interest of brevity.

A. Swedish rejected the Appellant's evidence, such as reports of medical tests, when they were considered admissible by laws and judicial rulings.

This case was dismissed for lack of expert testimony which, as the records show, was defined by Swedish as the opinion of a medical witness to be deposed. On the other hand, Appellant relied on the reports of the diagnostic test, the bypass surgery and other tests and papers owned by SWEDISH itself. As explained in the Petition for Review, these evidence have legal basis and supported by the courts. These reports are also relevant because they gave credence to Appellant's claims of wrong diagnosis and unnecessary bypass.

B. Appellant was denied his constitutional right of due process when Swedish imposed an arbitrary and self-serving condition which Appellant cannot meet.

As the records show, Swedish held that condition as non-negotiable. With limited income, Appellant is unable to hire a medical consultant (also a lawyer) who charges about \$ 500 an hour, with indefinite number of hours.

C. This medical malpractice case requires only the support of alternative medical opinion.

Appellant did not ask HOW and WHY the diagnosis and bypass surgery were

done which obviously required the opinion of a medical consultant. However, the Swedish reports themselves, in simple straight-forward English, first identified the **RIGHT** artery in immediate need of a bypass but later revealed the heart surgery was performed on the **LEFT** artery. No medical expert was involved in this assessment. **(Appendices D and E found in the Petition for Review).**

D. Appellant was denied his constitutional right of due process when the trial judge adopted a rush-to-judgment approach.

The trial lasted only 18 minutes to give way to another case scheduled the same day and the same time. The judge spent almost the whole time on the need for Appellant to secure medical and legal supports and did not allow any debate..

In its Answer, Swedish admitted due process may have been absent but Appellant had no evidence to support his argument.

In this Reply, Appellant cited again a decision of the U.S. Court of Appeals, Ninth Circuit as an authority and named the Swedish's lawyer (Ms. Cooper) who could confirm the state of disarray in the court room. The lawyer was kind enough to inform the court that Appellant was hard of hearing which the trial judge ignored.

E-1. Suppression of Documents.

Two documents (**Appendices F and G**), favorable to Appellant, were released only after about five years.

In its Answer, Swedish maintained the issue was moot after giving a vague reason.

In this Reply, the issue needs to be resolved since the two documents revealed that the left artery was relatively healthy and not a candidate for a bypass.

E-2. Documents Stricken off.

Swedish moved to strike the exhibits attached to Appellant's Brief which was granted by the Court of Appeals.

In its Answer, Swedish argued that Appellant cited no authority that said ruling was improper.

In this Reply, Appellant accepts the ruling which states " *the motion is granted as to all exhibits that were not included in the Clerk's papers...*" This does not affect Appendices A to M, which are the major supporting evidence and which are included in the Clerk's Papers. Appellant would like to correct the impression given by Swedish that he depends on articles from the internet for medical advice.

E-3. Informed Consent

Appellant signed a consent form for Swedish to perform bypass surgery on the right artery which was aborted since it was already completely calcified and harmless. With Appellant's chest already open, Swedish operated on the LEFT artery without the consent of Appellant who was under anaesthesia at the time of surgery.

In its Answer, Swedish argued that Appellant, with no support from a medical consultant, had no basis to question the decision of Swedish on the left artery.

In this Reply, Appellant maintains his consent was a must requirement. In the consent form, Appellant was advised, before signing, to be fully informed about the reasons and risks of the surgery. **(Appendix I)** No advice from a medical expert is necessary. What was required was Appellant's signature after being informed about details of the surgery. As stated in Issue E-1, the two suppressed documents revealed the left artery was relatively healthy and not requiring a surgery.

E-4. Statute of Limitation.

Under existing laws, the three-year limitation starts at the time of the incident. As an exception to this general rule, the period starts from the time the cause of the complaint is discovered.

In its Answer, Swedish argued Appellant failed to show evidence that the statute starts from the date of the bypass in 2006.

In this Reply, Appellant offers his letter dated October 30, 2009 addressed to Dr. David Gartman (Swedish's cardiac surgeon) which reads:

*"...the bypass operation was a success, a sincere thank to you The purpose of this letter is to seek your opinion the bypass operation centered only on the LEFT side of my heart. Yet in complete reversal, Dr. Petersen pinpointed the RIGHT side as the "culprit." **(Appendix J)***

Simply stated, the limitation did not start in 2006 when the bypass was done which Appellant, wrongly assumed then, considered a success. Rather, it started a little after 2009 when Appellant discovered that Swedish might have performed an unnecessary bypass by refusing to explain the reversal as detailed in the Petition.

E-5. Naming of an Expert

The Court of Appeals ruled that Appellant never named any expert which was earlier promised.

In its Answer, Swedish gave a one-sentence general statement.

In this Reply, contrary to that allegation, Appellant submitted the names of Dr. Harold Dash, Dr. Neale Smith and Dr. Frank Sheridan. **(Appendix L)**. In fact, Dr. Dash was ready to be deposed as insisted by Swedish. However, later, Swedish did not call

him when he learned Dr. Dash views were favorable to Appellant.

This allegation is just one of several misinformation reported by Swedish. Other examples are the alleged striken off of Appellant's appendices and exhibits as explained in Issue E-2 above and the alleged non-request for continuance as stated below in Issue E-6.

E-6. Request for Continuance.

The Court of Appeals held that, after one continuance, Appellant "*did not move for any further continuance.*"

In its Answer, Swedish also stated that Appellant did not move for an additional continuance.

In this Reply, contrary to that allegation, Appellant filed two motion for continuance filed on December 17, 2011 (**Appendix N**), followed by another on March 12, 2012. (**Appendix O**) . The earlier approved continuance was to enable Appellant to attend the 80th birthday anniversary of his wife in the Phillipines. This trip was planned six months earlier and could not be reset.

Also, Swedish would agree to a continuance if Appellant could name an expert witness. Three names will submitted (as showned in Issue E-5) but Swedish reneged.

The requested continuance was very important so Appellant would be able to depose Swedish's diagnostician and surgeon whose views were also suppressed during the interrogations.

C O N C L U S I O N

The Court of Appeals and the Superior Court dismissed this medical malpractice case mainly on lack of expert testimony. Completely ignored were the medical evidence, such as reports of interventions and laboratory tests where the doctrine of res ipsa loquitor directly applies. Here, Appellant will illustrate why it is so.

Wrong Diagnosis.

The Swedish diagnostician reported the right artery was diseased and the cause or 'culprit' of Appellant's heart trouble (Exh. D). Appellant did not ask questions on how and why it was done; thus, no medical consultant was needed. The thing speaks for itself.

The Swedish surgeon reported the right artery was fully calcified and nothing could be done (Exh. E) Again, no question asked on how and why, etc.

Thus, there is basis for the claim of wrong diagnosis. Appellant heart problem could have been GERD/heartburn/acid reflux on which he was under treatment at the time of surgery. Swedish ignored the findings of tests on the heart done by other hospitals which showed Appellant's heart was relatively healthy. **(EXHIBIT P).**

On why the right artery was fully calcified and harmless, no explanation was given by Swedish - but by Dr. Harold Dash of Everett Clinic. Swedish earlier wanted to depose Dr. Dash but later about-faced when he learned his explanation which is - Appellant must have had a no-symptom silent heart attack decades ago and, being young, his whole heart developed coronary arteries which took over the functions of the diseased main right artery.

Unnecessary Bypass.

Swedish performed a bypass surgery on the left artery soon after the aborted bypass

on the right artery (Exh. E). Again, no question on how and why, etc. It was enough to show such bypass on the left artery was done.

Thus, there is a basis for the claim of unnecessary bypass. First: In Issue E-3, it was not possible for Appellant to sign the consent form since he was under anaesthesia, among other reasons. Here, a patient makes the final decision; he may even disregard the opinion of his doctors. Second: the left heart was relatively healthy as revealed in two documents which were suppressed (E-1) and revealed by tests by other cardiologists contemporarily (**Appendix P**). Third: the left heart did not meet the criteria for a candidate for a bypas. (**Appendix P**).

.....

Appellant now rests his case.

May 13, 2014.



LEONARDO C. MARIANO, *pro se*

Appellant

A P P E N D I X

(Additions)

N	Plaintiff's Motion for Continuance of Defendant's Motion for Summary Judgment.	6
O	Plaintiff's Motion for a) b) continuance of Defendant's Motion for Summary Judgment.	6
P	Contemporary Findings and Appropriate of Bypass in pages 8-9 of Brief of Appellant.	7-8

Next sheet, please.

A P P E N D I X

A	Decision of the Court of Appeals affirming grant of summary judgment by the trial court dated November 25, 2013.	1
B	Decision of the Court of Appeals denying motion for reconsideration dated January 9, 2014.	2
C	Statement of social security benefit/SSI.	4
D	Summary of diagnostic catheterization: letter dated March 30, 2006.	5
E	Coronary artery bypass surgery report dated April 4, 2006.	5
F	Final report on diagnostic catheterization dated April 27, 2011. With covering letter.	6
G	Report on transesophageal procedure dated December 5, 2011. With covering letter.	6
H	Report Coronary Bypass Surgery of Mayo Clinic.	7
I	Consent form on bypass surgery of RIGHT artery dated March 30, 2006.	8
J	Letter dated October 30, 2009, first request for information.	9
K	Letter dated April 24, 2011, second request for information.	10
L	Email dated December 21, 2011 on Dr. Dash as expert witness. Email dated December 21, 2011 on Appellant's request for continuance.	11
M	Email dated December 8, 2011 on Swedish's condition for continuance.	11

NOTE: THE ABOVE DOCUMENTS ARE ATTACHED IN PETITION FOR REVIEW.

PROOF OF SERVICE

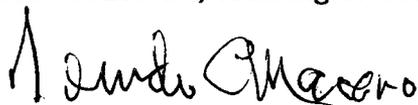
On May 13, 2014, Appellant priority- mailed to the Supreme Court of Washington State this letter, Reply to Respondent's Answer, with copies furnished the following:

Hon. Richard D. Johnson, Commissioner
Court of Appeals, Division 1
One Union Square, 600 University St.
Seattle, WA 98101

Ms. Pamela Andrews
Andrews - Skinner, P.S.
645 Eliot St., S-350
Seattle, WA 98119

I hereby declare, under penalty of perjury under the laws of the State of Washington, that the above is true and correct.

DATED May 13, 2014 at Everett, Washington State.



LEONARDO C. MARIANO, *pro se*

Appellant

12/27/11

N

FILED HONORABLE JUDGE RICHARD EADIE
2011 DEC 27 AM 11:05
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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

LEONARDO C. MARIANO, <i>pro se</i>	No. 11-2-15733-4 SEA
Plaintiff	
v.	PLAINTIFF'S MOTION FOR
SWEDISH CARDIAC SURGERY	CONTINUANCE OF DEFENDANT'S
<u>Defendant</u>	MOTION FOR SUMMARY JUDGMENT

TERMS OF REFERENCE

Defendant will agree to a continuance only on condition that Plaintiff's supporting expert witness can be deposed before the hearing on the Motion for Summary Judgment on January 13, 2012 (Exhibit P, attached).

Plaintiff cannot meet that condition without the required affidavits from the expert witness and from himself in support of the opposition to the summary judgment motion, considering the three reasons stated below.

CR 56(f) reads:

"(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other orders as is just."

R E A S O N S

2

N

FIRST: Inadequate Time Allowed. Defendant's Motion for Summary Judgment was filed on November 22, 2011 and Plaintiff is required to submit the response by January 2, 2012, giving the three cardiologists (mentioned below), whom Plaintiff consulted in preparing the complaint, only 40 days to finalize their medical evaluation.

1. Dr. Harold Dash, chair of Cardiology Department of The Everett Clinic, has just agreed to be deposed but at his office and on his own time because he has other responsibilities, mostly as the President of The Everett Clinic (Exhibit Q, attached). A Harvard graduate, Dr. Dash has been Plaintiff's treating cardiologist for the last five years.

Dr. Dash needs first to read the official reports of Defendant's diagnostician and surgeon which were released in a disc (still incomplete and poorly organized) only on December 5, 2011 (Exhibit R, attached). Earlier, Dr. Dash could have availed of the exhibits of evidence Plaintiff included in the Complaint. But, Defendant considered them inadmissible even though, ironically, six exhibits came from Defendant (Exhibit S, attached).

✓✓✓

2. Dr. Neale Smith of Western Washington Medical Group is still recovering from a major operation. He performed two sophisticated cardiac tests on Plaintiff before the surgery in 2006. He advised Plaintiff not to have the bypass.

3. Dr. Frank Sheridan, The Everett Clinic, is on a one-month vacation and will return on January 19, 2012. Two cardiac tests were also done and he recommended angioplasty or stent - not CABG (bypass).

Plaintiff consulted with the three above cardiologists during doctor visits, paid by

Medicare. A regular medical expert witness charges \$ 450 an hour.

3

SECOND: Need for More Discoveries. Plaintiff intends to depose (written) Dr. John Petersen, cardiac diagnostician and Dr. Frank Gartman, cardiac surgeon. These two specialists at Swedish Medical Center have personal knowledge of the procedures, unlike Defendant's attorneys whose answers to Plaintiff's two interrogatories were vague, evasive and in general fashion.

THIRD: Legal Issues. As a layman and compared with experienced lawyers, Plaintiff needs more time to explore the presence of genuine issues of material facts, as suggested by the three legal examples below which show contrasting views by both parties.. (This topic will be extensively discussed in Plaintiff's response, due on January 2, 2012 to Defendant's Motion for Summary Judgment.

1. Defendant alleges that the statute of limitation starts running on the day of the bypass in 2006. Plaintiff claims the start begun only 4 years later when the medical malpractice was "discovered" as defined by law.

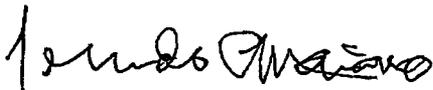
2. Defendant has some documents showing Plaintiff's consent to the bypass, but not in expressed language. Plaintiff contends no direct consent was given to operate on the left arteries. The question centers on whether Defendant explained fully to Plaintiff the nature and risk of the heart operation before the consent form was signed.

3. Defendant alleges the doctrine of *res ipsa loquitur* is not applicable in this case. Plaintiff maintains otherwise. Both parties cited their own selected court decisions supporting their respective contrary positions . Even courts do not agree between/among themselves. As a fact-finder, only the court would be able to sort out this controversy.

P R A Y E R

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In view of the above, Plaintiff prays that this Court grants Plaintiff's Motion for Continuance of Defendant's Motion for Summary Judgment.



LEONARDO C. MARIANO

December 27, 2011

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3/12/02



HONORABLE JUDGE RICHARD EADIE

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

LEONARDO C. MARIANO, *pro se*
Plaintiff
v.
SWEDISH CARDIAC SURGERY
Defendant

No. 11-2-15733-4 SEA
PLAINTIFF'S MOTION FOR (a)
RECONSIDERATION OF ORDER
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND (b)
CONTINUANCE OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT.

MAIN ISSUES FOR RECONSIDERATION

1. Defendant claims that Plaintiff lacks the required evidence and expert testimony in his complaint. In response, Plaintiff maintains such allegations were due to access to sources of evidence being DENIED to Plaintiff who, without legal representation, has been taken advantage of. Plaintiff hereby invokes his constitutional right of due process.

2. Defendant has assumed that its reasons for resorting to summary judgment, instead of a real trial, are valid in the absence of genuine issues of material facts. In response, Plaintiff maintains otherwise since both parties have raised specific contrasting issues needing resolution in their briefs which have now been joined. Thus, summary judgment is not appropriate.

PLAINTIFF DENIED ACCESS TO SOURCES OF EVIDENCE

1. DEPOSITION BLOCKED. Plaintiff's move to depose Defendant's cardiac diagnostician and cardiac surgeon was, in effect, blocked when Defendant filed its Motion for Summary Judgment. The purpose of the deposition was for Dr. John Petersen and Dr. David Gartman to explain their sides to Plaintiff's allegations of a) wrong diagnosis and b) unnecessary heart bypass on the left arteries.

During interrogatories made by Plaintiff to Defendant's lawyer, responses were vague, evasive and generic. The deposition of the two Defendant's cardiologists would have been the right approach because of their PERSONAL KNOWLEDGE of the events under dispute

Defendant filed its Motion for Summary Judgment too early during the discovery period. It was filed on November 22, 2011 while deadline for ending discovery is August 27, 2012 - nine months away. As a non-lawyer, Plaintiff needed more lead time for background studies and to identify discovery questions.

Another reason for depending on deposition was to require Dr. Petersen and Dr. Gartman to authenticate/verify their own exhibits in the possession of Plaintiff to make them admissible as evidence. These exhibits consist of medical tests and reports which are acceptable as evidence under RCW 5.45.020 and under the doctrine of *res ipsa loquitor*.

Another source of medical testimony is Plaintiff's own treating cardiologist with whom Plaintiff had discussed doubts about the heart bypass for five years prior to filing the complaint. Dr. Harold Dash, a Harvard graduate, is chair of the Cardiology Department of the Everett Clinic. Plaintiff believes Dr. Dash would be competent

enough to provide the required medical testimony, pending the hire of a required outside medical expert witness. Defendant was earlier scheduled to depose Dr. Dash.

2. SUPPRESSION OF EVIDENCE. After Plaintiff's regular consultations with Dr. Dash, treating cardiologist for five years, Plaintiff started to develop doubts about his heart bypass. To resolve them, Plaintiff wrote Dr. Gartman on 10/30/09 asking why a bypass was done on the left arteries whereas the diagnosis was on the right arteries. No response was received for more than a year. Next, a follow-up confrontational letter was made on 04/24/11. This time, there was a response - but not a written one but only an overdue submission of the diagnostic report of Dr. Petersen. To get answers, the only recourse was a face-to-face deposition which was set aside with the filing of Defendant's Motion for Summary Judgment.

The Petersen diagnosis turned out to be as damaging as the non-response to Plaintiff's inquiries. The report was released only after five years intentionally. It showed the left arteries were relatively healthy compared to the right arteries which were completely calcified and thus harmless, thereby leaving the Defendant with no reason why a bypass was done on the left arteries.

3. MISREPRESENTATION. Defendant claimed that "*..... CR 11 together with the statutory requirements under RCW Ch. 7.70, compel you to have supporting testimony from a qualified medical expert witness PRIOR to filing a medical negligence lawsuit.*" . However, after reading CR 11 and RCW Ch. 7.70, Plaintiff did not find such instruction at all. Defendant demanded Plaintiff to name his expert witness on 10/05/11 while deadline for name submission is 05/14/12

SUMMARY JUDGMENT - NOT APPROPRIATE

Under CR 56(e), Plaintiff, as the adverse party, must cite specific genuine issues of material facts. Below are some which are just listed without details but sufficiently discussed in the briefs of both parties to preserve brevity in this motion.

1. Statute of Limitation
2. Consent to authorize heart bypass.
3. *Res ipsa loquitor*.
4. Medical expert witness - a requirement before filing a complaint
4. Each party offering contrasting court decisions supporting their arguments.

PRAYERS

In view of the arguments presented above and to give unrepresented Plaintiff his day in Court with the playing field leveled, it is prayed that:

- **the order of the Court granting Defendant's Motion for Summary Judgment be reconsidered.**

In view of the need for more lead time by Plaintiff to strengthen his case, including the hiring of a lawyer and an expert medical witness, it is prayed that:

- **Defendant's Motion for Summary Judgment be continued for four months.**

.....

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

March 12, 2012
1123 Rainier Av., # 415
Everett, WA 98201


LEONARDO C. MARIANO
Plaintiff, *pro se*

P

No. 68924-0

Court of Appeals
Division 1
Washington State

LEONARDO C. MARIANO, *pro se*
Plaintiff/Appellant

v.

SWEDISH CARDIAC SURGERY
Defendant/Appellee

BRIEF OF APPELLANT

Leonardo C. Mariano, *pro se*

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January 5, 2013

doctors: Dr. George Cox on acid reflux and hiatal hernia, Dr. Michael Tamber on thyroid nodules, Dr. Ronald Green on lung lesions, Dr. Michael Millie on gallstone Dr. Frank Sheridan on the heart, Dr. Neale Smith on the heart and Dr. John Lank on diabetes and blood pressure.

4. Contemporary Findings. Defendant ignored other studies by several veteran cardiologists, discussed below, that Plaintiff's right artery was relatively healthy which contradict the dire assessment of Defendant. Essentially, there was free flow of blood in the arteries of the heart. Defendant violated a major provision of RCW 7.70.040:

*“ exercise that degree of care, skill, and learning expected of a reasonably prudent health care at that time in the profession or class to which he belongs, in the State of Washington, **acting in the same or similar circumstances.**”*

a). In the Nuclear Scan Myocard Spect Rest/Stress done on August 11, 2005 (eight months before the bypass), Dr. Neale Smith of Western Washington Medical Group reported:

“ no ischemia is identified. nuclear medicine portion showed normal left ventricular systolic function.... ” (CP p. 108)

b). In the Stress Test done January 20, 2003, Dr. Frank Sheridan of the Everett Clinic reported:

“ patient was able to exercise for 9 minutes without any chest pain.... this test is interpreted as negative for ischemia. ” (CP p. 103)

c). In the echocardiogram test done January 19, 2000, Dr. Kirk Prindle of the Everett Clinic reported:

“ No evidence of reversible coronary artery blood flow

*abnormalities He falls into the lowest possible risk group....
the likelihood of having a normal life expectancy is superb.”*
(CP p. 102))

C. UNNECESSARY BYPASS.

1. Appropriateness. According to Mayo Clinic (Appendix A, p.), coronary bypass surgery is an option if:

- “* *You have severe chest pain caused by narrowing of several of the arteries*
- * *You have more than one diseased coronary artery and the heart’s main pump - the left ventricle - is not functioning well.*
- * *Your left main coronary artery is severely narrowed or blocked. This artery supplies most of the blood to the left ventricle.*

The unplanned bypass on the left artery done by Defendant was unnecessary because none of the above conditions were met.

Re main left artery above. In the coronary angiography Dr. John Petersen stated that this artery had only “*moderate calcification in its lumen but no critical stenosis*”. (CP p. 124)

Re left ventricle above. In the echocardiogram , Dr. Neale Smith of the Western Washington Medical Group stated: “... *The left ventricle is normal in size....There are no wall motion abnormalities.*” (CP p. 106)

Re chest pain above. Plaintiff had no severe chest pain, only shortness of breath. In his evaluation report dated March 21, 2006, Dr. John Petersen stated: “... *It has not been a radiating pain. It does not go t the jaw or down the arms.* (CP p. 113))

None of the three conditions above were met. Meaning, the left artery is not a