The Danger of Failing to Submit an Expert Report in a Personal Injury Case

February 18, 2021 | by Amanda Clark

In a recent, unpublished Appellate Division decision, the court addressed what can happen if a plaintiff in a personal injury action fails to submit an expert report, particularly where the plaintiffs were subject to the verbal threshold. This post explains why an expert report is necessary when someone is injured in a car crash.

Car Accident Injuries

A recent case before the Supreme Court of New Jersey demonstrates the importance of obtaining an expert report when injured in a motor vehicle accident. The facts of the case were that the defendant struck the plaintiffs’ vehicle in the rear which caused the plaintiffs to strike the vehicle ahead of their car. Two days after the car accident, one of the plaintiffs, named Ben, was treated by a chiropractor for neck and lower back pain, and began a course of treatment that included chiropractic care, acupuncture and physical therapy. He then underwent MRI testing to his neck and back which revealed disc bulges and herniations. Due to his persistent pain, he consulted a pain management specialist and received three injections, one to his neck and two for his back. The second plaintiff, named Christina, underwent similar treatment, chiropractic care, MRI testing to her neck, and received three neck injections.

Plaintiffs Seek Compensation for their Injuries
The plaintiffs filed a complaint seeking to recover for their injuries related to the car accident. The defendant filed an answer and twenty separate defenses, including that the plaintiffs’ claims were barred because they failed to pierce the verbal threshold.

**What is the Verbal Threshold?**

The verbal threshold is also known as a limitation on lawsuit option and is part of an automobile insurance policy. It means that a personal injury plaintiff cannot file a civil lawsuit to obtain financial compensation for pain and suffering unless their injuries fall within at least one of six categories:

1. death;
2. dismemberment;
3. loss of a fetus;
4. significant disfigurement or scarring;
5. a displaced fracture; or
6. a permanent injury.

**Which Category Were Plaintiffs Ben and Christina In?**
Ben and Christina argued that they each suffered a “permanent injury,” thereby piercing the verbal threshold and enabling them to file a lawsuit for financial compensation. By definition, a permanent injury is an injury in which a body part or organ, or both, has not healed to function normally and will not heal to function normally even with further medical treatment. The defendant, however, argued that the plaintiffs failed to satisfy the verbal threshold because they did not produce medical evidence in the form of a narrative report from a medical expert specifically addressing the “permanent injury” requirement of the verbal threshold.

**Did the Plaintiffs' Injuries Satisfy the Verbal Threshold Requirement?**

The defendant argued that a report from a medical expert was required to show a diagnosis of injuries sustained in the motor vehicle accident and to address the issues of causation and permanency. The plaintiffs argued that their injuries and medical records, without an expert report, satisfied the verbal threshold requirement or that, at a minimum, a jury should decide the issue rather than the Court.

The trial court methodically reviewed the plaintiffs’ medical records and determined that the records lacked any reference to permanency or causation. Further, the trial court stated that a plaintiff must proffer a medical expert opinion based on objective medical proof in order to meet the verbal threshold requirements. Absent the medical expert report, the plaintiffs did not prove the verbal threshold, and the trial court dismissed the case in favor of the defendant.

Though the plaintiffs appealed the trial court’s decision, the Appellate Court concluded as well that the plaintiffs failed to meet their burden to provide evidence to satisfy the verbal threshold and demonstrate a permanent injury causally related to the automobile accident. The case dismissal was upheld.

**The Takeaway: Produce an Expert Report**

Plaintiffs in most personal injury actions must produce medical evidence in the form an expert report. The report should specifically address permanency and causation, because without that information
a judge could decide to dismiss the case. The personal injury lawyers at Einhorn Barbarito regularly deal with claims involving verbal thresholds, and frequently consult with experts in a variety of medical and technical fields. Contact the attorneys at Einhorn Barbarito for an in-depth analysis of your case.