Challenges of Litigating Mild Traumatic Brain Injury

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Objective

• Prove impairments are caused by organic injury
• Prove the impairments are permanent
• Prove that the impairments impact on function
Think Like a Juror

• You know nothing
• Medical science knows everything
• X-rays, MRI and CT are infallible
• The patient/plaintiff looks and sounds fine
Challenges

• Injured party looks healthy
• No objective evidence of injury
• Experts rely on self report in making diagnosis
• Neuropsychology results are open to interpretation
• Equally qualified experts disagree on diagnosis, causation and functional impact
Standard Defences

• Any symptoms are emotional and can be rectified by proper treatment
• The plaintiff is exaggerating or malingering
• Any impairments are as a result of pre-existing problems or a post accident event
• The plaintiff has bought into disability
Strategies

• Look for physical evidence in the “early records”
GCS = 14
...Significant damage to vehicle ++++...pt unconscious. Immobilized at scene & pt regained consciousness en route to Trenton hosp (reportedly GCS 13-14)...Vomited x 1 & incontinent of urine...
Strategies

• Document in detail the evolution but overall consistency of symptoms
Use the Later Records to Show Consistency of Symptoms

Attention and Concentration: Stephen demonstrates auditory and visual distractibility and requires redirection to complete tasks.

New Learning: Spencer is at risk for new learning difficulties due to his shortened attention span, distractibility, and poor memory.

Functional Performance:
- Self Care: Spencer requires constant supervision due to safety concerns.
- Leisure: Spencer responds best to quiet activities (of 6-7 minutes duration) in a structured setting, or formatting activities (eg. playing catch).
- School Performance: Spencer is at risk for significant new learning difficulties.
Strategies

• Comment on force of impact/property damage if applicable
Photographs of Badly Damaged Vehicle
Strategies

• Explain the mechanism of injury
Use Illustrations and Models to Explain Anatomy, Function and Mechanism of Injury
RIGHT-SIDED BRAIN INJURY AFFECTS LEFT SIDE OF BODY

Damage to right side

Fibres cross to left side of body

Spinal cord

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Video: Coup/Contre-Coup Brain Injury
Video: Diffuse Axonal Injury
Video: Diffuse Axonal Injury- Breaking of Axon
Strategies

- Experts explain negative CT scans and MRI
  - Imaging techniques are still in their infancy
  - Negative scans expected in cases of mild and moderate TBI
Strategies

• Differentiate any pre-accident symptoms
• Compare and contrast pre-accident success with post-accident inability to function in similar roles
• Rely on reports of family
QUESTIONS