

1963

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### Recommended Citation

Henry B. Fischer, Recent Traumatic Disease Claims, 12 Clev.-Marshall L. Rev. 276 (1963)

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## Recent Traumatic Disease Claims

Henry B. Fischer\*

**W**HAT CAUSES A PERSON to become afflicted with a particular disease? On first impression, one might reply that this is the sort of question that should be presented to a medical doctor. However, in personal injury actions, questions of this type are answered by juries<sup>1</sup> in their fact-finding capacity. To determine the question whether a particular trauma, caused a subsequent diseases. Both of these facets are related to medical advances.

Claimants over the years have alleged a causal relation between trauma and almost every conceivable disease. Medico-legal literature abounds with articles concerning the relation between trauma and the more commonly occurring diseases, such as cancer,<sup>3</sup> diabetes,<sup>4</sup> arthritis,<sup>5</sup> bursitis,<sup>6</sup> heart disease,<sup>7</sup> multiple sclerosis,<sup>8</sup> and epilepsy.<sup>9</sup> Numerous books wholly devoted to the relation of trauma and disease, have been written.<sup>10</sup>

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\* B.S. in Chem. Eng., Northwestern University; Patent Chemist, Lubrizol Corporation; Third-year student at Cleveland-Marshall Law School.

<sup>1</sup> 20 Am. Jur. 648, § 776; 7 Wigmore, Evidence, § 1976 (3rd ed., 1940).

<sup>2</sup> 20 Am. Jur. 730, § 867; and see, Averbach, Causation; A Medico-Legal Battlefield, 6 Clev.-Mar. L. R. 209, 214 (1957).

<sup>3</sup> 3 Am. Jur. Proof of Facts 127; Adelson, Injury and Cancer, 5 Wes. Res. L. R. 150 (1954); Heuper, Trauma and Cancer, 1 Trauma (1) 47 (1959); March, Traumatic Cancer in Workmen's Compensation, 11 Clev.-Mar. L. R. 501 (1962).

<sup>4</sup> 4 Am. Jur. Proof of Facts 453; Tranquada, Diabetes Mellitus and Trauma, 2 Trauma (3) 1 (1960).

<sup>5</sup> 2 Am. Jur. Proof of Facts 43.

<sup>6</sup> 3 Am. Jur. Proof of Facts 117; Gordon, Injuries of Shoulder and Upper Arm, 1 Trauma (6) 31 (1960).

<sup>7</sup> Moritz, Trauma and Heart Disease, 5 Wes. Res. L. R. 133 (1954); Traumatic Heart Disease—Current Trends, 7 Curr. Med. for Attorneys 9 (1960); Goldwater, Occupational Exposures and Heart Disease, 3 Trauma (4) 29 (1961).

<sup>8</sup> Dougherty, Personal Injury and Multiple Sclerosis, 8 Prac. Lawyer 31 (1962).

<sup>9</sup> 4 Am. Jur. Proof of Facts 699; Perr, Post-Traumatic Epilepsy and the Law, 8 Clev.-Mar. L. R. 129 (1959); Abbott, Post-Traumatic Epilepsy, 2 Trauma (1) 101 (1960).

<sup>10</sup> Brahdly, Disease and Injury (1961); Moritz & Helberg, Trauma and Disease (1959); Brahdly & Kahn, Trauma and Disease (2nd ed., 1941); Reed & Emerson, The Relation Between Injury and Disease (1938).

This article is primarily concerned with cases wherein an allegation is made that a single trauma caused a disease. To enhance understanding, the immediately following paragraphs are devoted to some pertinent definitions.

Trauma<sup>12</sup> has been defined as an injury to tissue following as the direct result of violence in some form, whether the latter be physical, chemical, or electrical. The discussion to follow is concerned primarily with the aspects of single mechanical trauma, *i.e.*, stress, strains, impact, and cuts.

Disease is defined as a dynamic state in living organisms in which normal characteristics of structure or function are altered.<sup>13</sup> The healthy body or tissue tends to maintain homeostasis, *i.e.*, a steady state of acceptable physiological activity, by means of many regulatory mechanisms. When any extrinsic or intrinsic factor causes an alteration of the body tissue so that the available homeostatic mechanisms cannot overcome the alteration, disease results. In another sense, disease is the failure of the body or one of its parts to adapt to change.

On the definitions of trauma and disease, there seems to be little semantic difficulty between the medical and legal professions. Assuming the fact of trauma, some difficulty lies in establishing the connection between trauma and the disease.<sup>14</sup>

However, semantic difficulties between medical and legal professionals are often present in considering whether or not a particular trauma *caused* a particular disease.<sup>15</sup> Indeed, the courtroom has been depicted at times as being a battlefield for lawyers and doctors.<sup>16</sup> Since the practical issue involved in such litigation is whether or not a defendant should pay for the cost of treating the disease, examination of these semantic differences are necessary in this article.

In a legal sense, proximate cause is the *nexus* between one's act, the resulting injury and legal liability. More specifically, legal liability arises when one's wrongful act is the proximate cause of a claimant's damage. The proximate cause is that event in a chain of events, without which the damage would not have

<sup>12</sup> 14 McGraw-Hill Encyc. of Science and Technology 68 (1960).

<sup>13</sup> 4 *Id.* 235.

<sup>14</sup> *Bedenk v. St. Louis Public Service Co.*, 285 S. W. 2d 609 (Mo., 1955) (tremor in eyelids and hand).

<sup>15</sup> *Small, Gaffing at a Thing Called Cause*, 31 Tex. L. R. 630 (1953); *Averbach*, *op. cit. supra* n. 11.

<sup>16</sup> *Averbach*, *op. cit. supra* n. 11.

resulted.<sup>17</sup> As applied here, damages may be had in such instances where trauma causes a disease,<sup>18</sup> where trauma activates a dormant disease,<sup>19</sup> or where trauma aggravates a pre-existing disease.<sup>20</sup> In the first two examples, damages would include the cost of curing or treating the disease, whereas in the third situation, the damages should include only the costs supplemental to what would have been required to cure or treat the pre-existing disease.

In a medical sense, the factors which cause any alterations that have a bearing on disease causation are called etiological factors.<sup>21</sup> Few diseases are caused by a single etiological factor.<sup>22</sup> There are usually multiple factors in the production of a disease in an individual. There may, however, be one factor which is constant, which is essential—the *sine qua non*—sometimes called the specific cause.<sup>23</sup> The latter is best thought of as a primary etiological factor, whereas other factors that may fit into the causation of a disease may be thought of as secondary etiological factors.

A good example<sup>24</sup> of a disease wherein primary and secondary etiological factors have a bearing is tuberculosis. An individual cannot have tuberculosis unless he also has the tubercule bacilli organisms in his system. Although the presence of tubercule bacilli is necessary for the appearance of tuberculosis symptoms, mere presence is sometimes insufficient in itself to cause such symptoms to appear. In most instances, however, an individual suffering from malnutrition and having tubercule bacilli in his lungs would more than likely suffer from the symptoms of tuberculosis. Here, the tubercule bacillus may be classified as a primary etiological factor, whereas malnutrition may be classified as a secondary etiological factor.

Diseases in the medical sense may be divided into three categories with respect to the etiological role of trauma. These are: (1) diseases which are always a result of trauma, *i.e.*, contusions, abrasions, and lacerations, (2) diseases which never

<sup>17</sup> Black, Law Dictionary (4th ed., 1957).

<sup>18</sup> Ingram v. McCorkle, 121 S. 2d 303 (La. App., 1960).

<sup>19</sup> Hazlewood Taxicab Co. v. Hodge, 357 S. W. 2d 711 (Ky. App., 1962).

<sup>20</sup> Sentiles v. Inter-Caribbean Shipping Corp., 361 U. S. 107, 110 (1959).

<sup>21</sup> Brahdy, *op. cit. supra* n. 10 at 1.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

result from trauma, *e.g.*, measles, and (3) diseases which develop with or without trauma, *viz.*, where trauma may be a secondary etiological factor.<sup>25</sup>

To evaluate the role of trauma in causing a particular disease, a physician will likely consider:<sup>26</sup>

1. The physical and psychic condition of the patient before injury,
2. The type, site, and severity of the injury,
3. The immediate effects of the injury (objective and subjective),
4. "Bridging symptoms" (symptoms sandwiched in between and/or overlapping the injury and disease symptoms),
5. Time interval between injury and appearance of disease symptoms,
6. Diagnosis of the disease (mode of onset, site of onset, and course).

Using the above or other criteria in analyzing the role of trauma on an apparently subsequent disease, a physician might conclude that:<sup>27</sup>

1. The trauma was a true causative factor (the disease could not have occurred without the injury).
2. The trauma was a major precipitating factor, (*i.e.*, injury alone could not have caused the disease—the disease was already present in the latent form; other etiological factors can be demonstrated to be partly responsible for the disorder or can be conclusively shown to be necessary along with the injury for production of the disease—the disorder probably would not have appeared at the time it did without the injury and might never have become manifest at all without the injury).
3. The trauma was an aggravating factor, *i.e.*, the disease was manifest prior to the injury, but its clinical course was materially aggravated or adversely affected by the injury.
4. The trauma was a minor precipitating factor, *i.e.*, the disease was already present in a latent form, and would have become manifest without the trauma. It is probable that the trauma, either through its physical or psychological effects was at least partially responsible for the outbreak of the disease at the present time.

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<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at 15.

5. The trauma had no demonstrable relation to the disorder, i.e., there was no continuity of the injury, bridging, and disease symptoms. Knowledge of the pathologic process of the disease and time when the disease symptoms appeared do not allow the conclusion that such process began at the time of the injury. It is extremely unlikely that the injury was in any way connected with the disorder.

Even cursory examination of the above concepts of *cause* might lead one to the conclusion that both the medical and the legal professions need to have some understanding of each other's concepts to allow for effective resolution of personal injury suits. Obviously, specific background information is necessary in determining the significance of various symptoms and their relation to a disease. As mentioned before, whether a disease is caused by a wrongful trauma is a question within the sole province of the jury. The jury must consider the evidence presented to it and make a finding of fact. The jury is aided in its determination of cause by testimony of expert witnesses, physicians, which becomes part of the trial record.

With respect to reversing the jury's determination on questions of disease causation, it has been said that:

The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury . . . Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because the judges feel that other results are more reasonable.<sup>28</sup>

Where, however, medical facts become common knowledge, courts may take judicial notice of them. For example, we find that in the seventeenth and eighteenth centuries, "Doctors gravely discussed whether a woman could be got with child by the devil, or by a dream, and French judges legitimized an infant, when the husband had been separated four years from the mother, on the grounds that the child owed its paternity to a dream!"<sup>29</sup> Today, we find judges taking judicial notice of the period of gestation.<sup>30</sup> Be this as it may, it is not always possible to have all facts necessary for analysis before doctors or juries in a form suitable for absolute application of the above listed

<sup>28</sup> *Sentiles v. Inter-Caribbean Shipping Corp.*, *supra* n. 20.

<sup>29</sup> *Brahdy*, *op. cit. supra* n. 10 at 13.

<sup>30</sup> *In re McNamara*, 181 Cal. 82, 183 P. 552, 7 A. L. R. 313 (1919).

considerations. Likewise, etiological factors of diseases are not generally of such common knowledge today that judges may take judicial notice of them, especially where two or more schools of medical thought exist.

Let us now examine some recent disease complaints and the relationship or lack of relationship thereto of trauma.

### Traumatic Cancer

Claimants have alleged that single impacts to parts of their bodies, such as: to the breasts,<sup>31</sup> the knee,<sup>32</sup> and to the shoulder<sup>33</sup> have caused cancer. Damages were awarded on such claims even though medical opinion seemed clear that single trauma is not an etiological factor of cancer. In this sense, one reviewing court said:<sup>34</sup>

The jury could reasonably (have) found that the (cause of) cancer is unknown; that the preponderance of medical opinion is to the effect that cancer rarely ever results from a single trauma; but that the exceptional circumstances surrounding this case, particularly the period that lapsed between the date of the trauma and the appearance of the cancer, and the fact that the cancer was located at the precise point of injury, justified the conclusion that there was a causal connection between the plaintiff's injury and her cancer.

In considering trauma as an etiological factor in cancer, physicians rely on statistics from two world wars, clinical histories, and clinical tests on animals.<sup>35</sup> A recent law review article pointed out a clinical test wherein mice were subjected to known etiological cancer factors and then subjected to trauma. More cancer was reported in the traumatized group than in the control group.<sup>36</sup>

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<sup>31</sup> Lee v. Blessing, 131 Conn. 569, 41 A. 2d 337 (1945); Dennison v. Wing, 279 App. Div. 494, 110 N. Y. S. 2d 811 (1945).

<sup>32</sup> Branson v. Fireman's Retirement Fund, 79 Idaho 167, 312 P. 2d 1037 (1957).

<sup>33</sup> Trauma Held to be Cause of Cancer, 13 TAPA Bull. (3) 4 (Mar., 1962); 7 Oleck, Neg. & Comp. Serv. No. 17 (1962).

<sup>34</sup> Lee v. Blessing, *supra* n. 31.

<sup>35</sup> Hueper, Medicolegal Aspects of Cancer, 25 American Journal of Clinical Pathology 116 (1955).

<sup>36</sup> March, *op. cit. supra* n. 3.

### Traumatic Tuberculosis

*Case One.*<sup>37</sup> A 19-year-old married woman suffered injuries to her neck, shoulder, and back muscles and tissues from an auto collision. Prior to the accident, she was allegedly strong and healthy, did housework, and cared for two children. Immediately following the accident she was hospitalized for twelve days and made twenty visits to her doctor over a period of seven months. Fluoroscopic images of her chest taken one and two years prior to the accident by the Louisville Tuberculosis Association were negative in showing the presence of tuberculosis. For two months immediately after the accident, fluoroscopic examinations of her chest taken by her doctor were also negative. Approximately seven months after the accident, she complained of chest discomfort and coughing and fluoroscopic and x-ray examinations revealed that she had tuberculosis in both lungs. At the time of the trial she had spent a year in a sanatorium and was still residing there. There was medical testimony to the effect that the injuries either activated or lighted up a dormant germ or infection or so reduced the plaintiff's resistance as to cause her to contract the disease. The jury found the trauma so related, awarded the plaintiff \$20,000 accordingly, and its decision was upheld upon appeal, the court saying that ". . . a negligent actor is liable for a disease which is contracted because of lowered vitality from injuries, or for a disease activated or lighted up by injuries."

*Case Two.*<sup>38</sup> A seaman aboard ship in a heavy sea was pitched into the air, fell back first on the ship deck, and was washed a considerable distance by a wave. There was a possibility that he inhaled some sea water. The petitioner was hospitalized and shortly after the accident the active symptoms of tuberculosis appeared. X-ray pictures taken prior to the accident revealed a pulmonary lesion involving a "small scarred inactive area." In "retrospect" the specialist felt that the lesion had been tubercular. The plaintiff was a diabetic prior to and after the accident. One doctor said that the accident, "probably aggravated his condition." In response to a hypothetical question as to the effect of an accident like the petitioner's on the aggravation or activation of a pre-existing, dormant tubercular

<sup>37</sup> *Hazlewood Taxicab Co. v. Hodge*, *supra* n. 19.

<sup>38</sup> *Sentiles v. Inter-Caribbean Shipping Corp.*, *supra* n. 28; *cf.* Jones Act, 46 U. S. C. A. § 688.

condition, another specialist said that "acute dissemination of the tuberculosis might" be a consequence of the accident. A specialist who had treated the petitioner during his post-accident hospitalization testified to the effect that both the diabetic condition and the accident were etiological to the aggravation, but would not commit himself as to which etiological factor more probably caused it. A verdict for the petitioner was reinstated by the United States Supreme Court saying:<sup>39</sup>

The jury's power to draw the inference that the aggravation of petitioner's tubercular condition, evident shortly after the accident, was in fact caused by the accident, was not impaired by the failure of any medical witness to testify that it was in fact the cause. Neither can it be impaired by the lack of medical unanimity as to the respective likelihood of the potential causes of the aggravation existed and were not conclusively negated by the proofs. The matter does not turn on the use of a particular form of words by the physicians in giving their testimony. The members of the jury, not the medical witnesses, were sworn to make a legal determination of the question of causation . . . The very essence of its function is to select from among conflicting inferences and conclusions that which it considered most reasonable.

The award to petitioner in this case amounted to approximately \$20,000.

#### **Traumatic Meningoencephalitis<sup>40</sup>**

Plaintiff, a 37-year-old elevator service man, was subjected to whiplash (10-m.p.h. differential speed). Just before the accident plaintiff was suffering from a cold and a sore neck (cause unknown). His only immediate complaint from the accident was to the effect that his neck pain had extended from the base of his skull to his back section in between the shoulder. Other than that he did not complain and he left the scene of the accident without filing a police report and resumed his work in servicing elevators.

Four days after the injury the plaintiff's physician examined him and found that he was suffering from a strain or sprain common to whiplash injury. He had limited motion of his head, and the doctor prescribed heat, rest, and massage for the neck ail-

<sup>39</sup> *Id.* at 110.

<sup>40</sup> *Butler v. Palm*, 351 Ill. 256, 184 N. E. 2d 633 (1962).

ment. X-rays taken during a subsequent visit (twenty-two days from trauma) revealed no fractures, and the plaintiff, still complaining of pain, didn't indicate or exhibit any other unusual symptoms.

Three months after the injury, the plaintiff, while bowling, began to feel sick and tired and complained that, "he couldn't see just right and that everything was blurry like." He went home, vomited, and, feeling tired and as though he were catching a cold, went to bed. He was taken to the hospital on the following day and was unconscious for about one and one-half months—diagnosis, meningoencephalitis and subsequent pneumonia.

Seven months after the injury, the plaintiff went home for a four to five months' rest. He resumed work for about six weeks, rested for nine months, worked two months; his employment became quite irregular thereafter and amounted to about one-third of pre-trauma efforts. At the time of the trial, he was suffering from thickened speech, a balance problem, difficulty with vision, and his attitudes and entire personality were altered as compared to his pre-trauma disposition. This condition was diagnosed as probably permanent.

Medical testimony at the trial was to the effect that meninges are layers of membranes which cover the brain and spinal cord, that between these meninges and the surface of the brain is the spinal fluid, and that meningoencephalitis is an infection of these membranes and is present not only in the spinal fluid, but in the substance of the brain itself.

Expert medical testimony was to the effect that,<sup>41</sup> ". . . if the plaintiff had damage to his brain or his cord from the injury, then he could get a meningoencephalitis secondary to it," (defendant's objection to this testimony was overruled). As another doctor put it,<sup>42</sup> ". . . an accident creates an inflammation, creates an area of lowered resistance, which is an ample, often necessary reason, for the development of an infection in an area, granted that there was a muscle or bone which affected this region, a matter of nearly three months later."

Two other physicians stated that the incubation period of meningoencephalitis would be within three days to three weeks from the injury, that spinal cord injury would cause such symp-

<sup>41</sup> *Id.* 184 N. E. 2d at 637.

<sup>42</sup> *Ibid.*

toms as lack of muscular control within twenty-four hours after an injury, and that brain damage would be manifested by such symptoms as dizziness or headache within twenty-four hours after the injury.

Upon appeal, the court reversed the jury's decision that the accident caused the disease, stating that,<sup>43</sup> ". . . its conclusions must be supported by something more than mere speculation," and, that the evidence showed no spinal cord or brain damage. The case was remanded for new trial on the medical (disease cause) question.

### Traumatic Multiple Sclerosis<sup>44</sup>

Petitioner, while in the course and scope of his employment on top of a five-foot stack of oily tubing, slipped and fell upon his knees. He sensed immediate pain in his back and knees and a later sensation, "like somebody hit me right up here in the back with a blunt object." He suffered no bruises.

Prior to the accident, petitioner, a forty-one-year-old male, did "stock chaser" work and walked as much as twenty miles per day in gathering materials. Twelve days after the injury the petitioner ceased working, on a doctor's advice, and was hospitalized when the doctor noticed that he was suffering from pain in the lower back, numbness in the legs, diminished reaction of the lower extremities, exaggerated knee reflexes, ankle problems, and loss of abdominal reflexes. A neurosurgeon noted diminished reaction to pain and pressure in the lower extremities below the groin, absence of abdominal reflexes, involuntary oscillation of the eyes, and an unsteady gait. Subsequent examination revealed that the petitioner's spinal fluid contained an abnormal number of lymphocytes, indicating a lesion in the brain stem. The diagnosis was to the effect that petitioner was suffering from multiple sclerosis. The petitioner had a back disorder history with no indicated abnormalities in the spinal canal.

One physician said that there was no causal relation between the injury and the disease. Another physician said that the situation was coincidental. Another (examining) physician said that the petitioner was suffering from a single traumatic lesion of the spinal cord which could have resulted from the

<sup>43</sup> *Id.* 184 N. E. 2d at 638.

<sup>44</sup> *Mechanics' Universal Joint Div. v. Industrial Commission*, 34 Ill. 431, 173 N. E. 2d 479 (1961).

fall; later he changed his diagnosis from traumatic spina lesion to multiple sclerosis. Still another physician said that trauma could not cause the disease but could injure the spinal cord to aggravate a pre-existing condition.

The Industrial Commission found that the injury caused the disease or aggravated a pre-existing condition, awarding petitioner \$9750 and a \$65 per month pension. The reviewing court affirmed this view even though the testimony was considered highly conflicting, indicating that the Commission's findings would be reversed only where the findings were manifestly against the weight of evidence.

### **Traumatic Dupuytren's Contracture<sup>45</sup>**

Petitioner, a 42-year-old jail guard, was hurrying up a stairway when he tripped, fell forward, and<sup>46</sup>

. . . he instinctively extended his arms to break his fall. His hands traveled some three feet, and all of his 240 pounds, with the momentum of the fall, came to bear on the ends of his fingers . . . (on the edge of a step) . . . His hands slipped from the edge in such fashion that backward bent fingers formed an obtuse angle as his fingers slipped down the perpendicular of the riser and the heels of his palms came to rest on the stair below.

Petitioner suffered immediate pain, followed by swelling and discoloration. The jail doctor, who saw him the same day, described the condition of the hands as "sprained palmar tendons." As this condition subsided and disappeared, petitioner developed a thinning of the palmar fascia with nodular formation, skin contraction and restriction in the mobility of the metacarpal phalange joints of the index, middle, ring and little fingers of the right hand, and the same type of pathology (but to a lesser degree) involving primarily the ring finger and the middle finger of the left hand. —diagnosis, Dupuytren's contracture.

Prior to the injury, the petitioner had been a jail guard for about four years. Before this, he was employed as a bus driver and worked 48 hours per week steering fifteen to eighteen ton busses with no power steering.

One physician with five years general experience was of the opinion that repeated trauma over a period of time could cause

<sup>45</sup> Hall v. Ocean County, 72 N. J. Super. 474, 178 A. 2d 663 (1962).

<sup>46</sup> Id. 178 A. 2d at 667.

the disease, but that a single trauma could not cause it. Another physician (thirty years of experience with special interest in the disease) testified to the effect that petitioner's condition was not related to his fall.

One Dr. Graubard (noted to have studied over 1,000 cases on the contracture) was of the opinion that petitioner was predisposed to the disease and that the trauma he sustained produced the Dupuytren's contracture that he examined. He was of the opinion that the bus driving did not predispose the petitioner to the condition and indicated that he relied upon the, ". . . rapidity of development of this condition in his hands in which there was evidence of trauma with swelling in the palms and subsistence of swelling to the formation of nodules."<sup>47</sup>

Dr. Graubard also presented a paper<sup>48</sup> he had written on the etiology of Dupuytren's contracture based on a study of 329 cases. His testimony and paper indicated that people having an inherent or inherited blood type factor known as Rh prime or Rh double prime are predisposed to single trauma-induced Dupuytren's contracture and that this predisposition exists in approximately six per cent of the white population in the United States.

The Workmen's Compensation Commission dismissed the complaint. The Superior Court affirmed the County Court in overruling the Commission. Apparently impressed with Graubard's testimony and detailed study of the disease, e.g., his paper, the Superior Court said that ". . . we are satisfied from a consideration of all the evidence that the present condition of his hands is a result of the sudden, violent insult suffered by his palms . . . petitioner established his case by a preponderance of the probabilities, based on believable evidence."<sup>49</sup>

### Other Traumatic Disease Cases

Coverage of the cases to follow is reduced in scope. These additional cases are presented to allow a broader view of the subject of traumatic disease claims. The detail provided in preceding cases should be sufficient to allow the reader to appreciate the application of the pertinent medical and legal principles presented at the beginning of the article.

<sup>47</sup> *Id.* 178 A. 2d at 664.

<sup>48</sup> Grabard, Dupuytren's Contracture—An Etiologic Study, 21 J. International College of Surgeons, No. 1 (Jan., 1954).

<sup>49</sup> Hall v. Ocean County, *supra*, 178 A. 2d at 667.

### Traumatic Epilepsy<sup>50</sup>

A 15-year-old girl was struck by a car and suffered personal injuries including a deep muscle injury to the right thigh, numerous abrasions and contusions, multiple fractures to the pelvis, a basal skull fracture, a brain concussion and brain injury which produced epileptic seizures during the initial seventeen days hospitalization. The injuries were cured without substantial residual. She was awarded \$1,058.55 for medical expenses and \$8,500 for the personal injuries which included future costs for anti-convulsive medications prescribed by the doctors, based upon abnormal electroencephalographic findings at time of trial, to guard against the possibility of a recurrence of epileptic seizures.

### Traumatic Epilepsy<sup>51</sup>

A 6½-year-old girl was hit by a bus traveling at 30 m.p.h. She suffered a small deep wound on the left side of her head which bled profusely and her lower extremities showed some bruises and abrasions. Intracranial bleeding continued for 24-48 hours. On the day after the accident she began to vomit, had a headache, and surgical intervention was necessary to avoid serious damages due to pressure on the brain. Bony fragments and hair had to be removed from the skull and a small hole was made to gain access to the intracranial cavity to allow removal of a blood clot and normal positioning of the brain against the skull. A small metal disc was used to cover the opening so as not to leave the plaintiff with a soft spot on the skull. The disc was permanent. Her hospitalization lasted eight days and she remained at home for a month or so before returning to school.

Two years later, an electroencephalogram revealed abnormalities that appeared to be major and strongly suggestive of a focal convulsive disorder arising in the left temporal or inferior motor area, ". . . possibly with some grand mal component which may represent spread." The court awarded plaintiff \$15,000 and overruled an objection to a doctor's testimony that:<sup>52</sup>

I would think that if one considered one hundred people with a similar abnormality, if that abnormality were the result of an injury, that probably seventy-five per cent of those people some time would develop focal epilepsy,

<sup>50</sup> Ingram v. McCorkle, *supra* n. 18.

<sup>51</sup> Fort Wayne Transit v. Shomo, 127 Ind. App. 542, 143 N. E. 2d 431 (1957).

<sup>52</sup> *Id.* 143 N. E. 2d at 437.

and indicated that a medical witness may be asked his opinion as to the probable results of an injury. Note that no indicated pretrial seizures were suffered, and that the trial was held two years after the injury.

#### **Traumatic Heart Failure<sup>53</sup>**

In an auto collision, a boy suffered a fracture of the left femur, a head injury, a minor concussion, multiple lacerations of the right upper orbital region, contusion of the posterior chest wall, abrasions of the left knee, and a laceration of the left leg. Several days later surgery was performed in order to properly set the fractured femur. During the operative procedure the patient suffered heart failure and died on the following day—diagnosis, cardiac arrest with fatal brain damage. The auto collision was held to be the proximate cause of death.

#### **Traumatic Ulcers<sup>54</sup>**

Plaintiff, an octogenarian, was injured in a fall while alighting from the defendant's bus. Two months later, a gastric ulcer was diagnosed. A \$13,000 award was held to be not excessive even though it included the cost of maintaining the plaintiff in a nursing home after complete recovery from the effects of her injury.

#### **Traumatic Arthritis<sup>55</sup>**

The plaintiff, a farmhand, suffered a compound fracture to his left wrist as the result of an automobile accident. The doctor who treated him testified that the fracture would be painful for the first few months, that in later years there would probably be pain from traumatic arthritis, and that the plaintiff's ability to perform farm work would be lessened. An award for \$5,401.80, including \$118.80 for medical bills was affirmed on appeal.

#### **Conclusions**

There are two facets involved in adjudicating traumatic disease complaints which rely heavily on medical knowledge. These relate to the etiology or causes of diseases and the diagnoses of

<sup>53</sup> Adams v. Dantin, 107 S. 2d 809 (La. App., 1959).

<sup>54</sup> Easby v. Philadelphia Transportation Co., 402 Pa. 203, 166 A. 2d 494 (1961).

<sup>55</sup> Anderson v. Garza, 311 S. W. 2d 910 (Tex. Civ. App., 1958).

diseases. Both of these facets are related to medical advances. That is, the role of trauma as an etiological factor in a particular disease can best be determined when the factual situations of particular cases are viewed in light of the latest and most convincing etiological evaluations available. Also, assuming that a causal relation is established between a trauma and a disease, any damages given must take into consideration the latest methods for curing or arresting the disease.

It is clear that the role of the physician in the courtroom must include presentation to the jury of the etiological aspects of the diseases in question, as well as a diagnosis of the disease, if the jury is to make a wise decision on the issues of whether a particular trauma was the proximate cause of the disease in question and the damages relating thereto. It seems that judges and lawyers should be possessed of some knowledge of the aspects of disease etiology if the jury is to be presented with an accurate view of these aspects and with workable jury instructions.

The decisions of courts and juries must be based on the evidence and testimony they have before them. Recent publications<sup>56</sup> and seminars<sup>57</sup> have been devoted to aiding in the presentation of a complete and accurate picture. The author leaves it to the reader to evaluate the impact of these aids upon the cases presented.

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<sup>56</sup> See Finkle, *Trauma and Sexual Impotence*, 4 *Trauma* (2) 60 (1962).

<sup>57</sup> See 11 Belli, *Trial and Tort Trends* 413 (1961), seminar on *Electro cardiography*.