

Legal Brief: An Insider's View of a Recent Decision

A jury in Tennessee returned a defense verdict on Friday, July 12, 2019, in the case of 52-year-old Dean Smyth. Edward Ledger, DC, the defendant, was represented by defense attorney Jason Flanders.

Posted in [Case Studies](#) on Wednesday, July 31, 2019

From the Desk of Rebecca Johnson, NCMIC Claims Representative

Mr. Smyth was employed by a major appliance company as an engineer, earning \$101,000 per year plus bonuses. He claimed \$2.3 million in loss of earnings and \$200,000 in past medical expenses. Additionally, he requested \$2.6 million for future medical expenses.

The Situation

Mr. Smyth had numerous health issues, including obesity, high blood pressure, cardiac surgery and sleep apnea.

Mr. Smyth presented to Dr. Ledger on September 15, 2015, after hurting his neck playing pickleball. He returned four additional times for adjustments, and reported feeling better each time. Three days after his last adjustment, he woke up during the night and was unable to swallow or walk properly.

Mr. Smyth presented to the local ER and was diagnosed with an acute stroke with occlusion of the left vertebral artery (VA) and severe stenosis of the right VA. He was hospitalized for eight days and prescribed Coumadin upon release, which he remained on for a year.

A dissection was not diagnosed, but the patient did require placement of a PEG tube, due to his inability to swallow, which improved somewhat. Mr. Smyth experienced ongoing issues with tinnitus and vision loss. His gait problems were severe enough that he often walked with a cane.

Due to his vision problems, Mr. Smyth claimed he could no longer work as an engineer, and he received the highest level of long-term disability compensation. Although Mr. Smyth testified to numerous limitations, he admitted to golfing, hunting and fishing without issue. Due to his apparent level of activity while disabled, surveillance was ordered, which was not overly helpful other than it showed Mr. Smyth could ambulate without a cane at times.

The Trial

Mr. Smyth testified effectively on the stand. However, he did almost too well—one wondered what was actually wrong with him, although he did walk to the stand using his cane. Mr. Smyth's wife exaggerated about his physical damages, which were not apparent during Mr. Smyth's testimony, and didn't present well on the stand.

Mr. Smyth's treating doctor was an excellent witness for the plaintiff. She was one of the best plaintiff experts we had seen; however, she did present some conclusions without substantiation.

Although the plaintiff's neurologist expert was an effective witness for them, he made several concessions that were beneficial to the defense. This expert's main focus was that the patient was a poor candidate for cervical adjustments due to his health history of high blood pressure and cardiac surgery.

Our experts were Robert Creole, DC, as well as a neuroradiologist and a neurosurgeon. All experts were of the opinion that there was no contraindication to adjust. Moreover, the occlusion was far enough into the patient's skull that an adjustment could not have impacted that area of the artery.

Before the trial, the plaintiff demanded \$1.5 million to resolve the case. The practice's corporation where Dr. Ledger was employed was also named in the lawsuit. At the request of the practice owner, we offered \$50,000, which was rejected. At the close of trial, the plaintiff's attorney did not ask the jury to award a specific amount. There were \$2 million in policy limits at stake.

The Outcome

The jury returned a defense verdict after only two hours of deliberation.

Defense attorney Flanders believes there is no basis to appeal. NCMIC's legal expenses, not including the five-day trial, were nearly \$100,000. Since we prevailed, we are entitled to recuperate the costs of retaining our experts, which was close to \$50,000.