

3rd ANNUAL
MEETING YOUR DUTY TO ACCOMMODATE
OCTOBER 21 AND 22, 2003

UNDERSTANDING AND MANAGING THE INCREASE IN CHRONIC
CLAIMS AND NEWLY CLASSIFIED DISABILITIES

RICHARD M. BOGOROCH and LEANNE GOLDSTEIN
BOGOROCH & ASSOCIATES
Barristers & Solicitors
Sun Life Centre
150 King Street West
Suite 1707
Toronto, Ontario
M5H 1J9

1. Introduction

In 1924, Emily Dickinson¹ wrote the following of pain:

PAIN has an element of blank;
It cannot recollect
When it began, or if there were
A day when it was not.

It has no future but itself,
Its infinite realms contain
Its past, enlightened to perceive
New periods of pain.

For both medical science and the legal profession, the subject of pain remains an elusive and controversial one. Pain has been defined by the International Association for the Study of Pain (“IASP”)² as “an unpleasant sensory and emotional experience which is primarily associated with tissue damage or described in terms of tissue damage, or both”.

What can be extrapolated from this definition is that pain is comprised of both physical and emotional components. What complicates things further, is that the perception of pain remains largely a subjective experience. This poses a difficulty for the medical profession when faced with the prospect of measuring pain and determining its etiology. This, in turn, poses a difficulty for those in the legal profession who rely upon these medical assessments in order to determine causation and quantify damages.

¹ Dickinson, Emily. *The Complete Poems of Emily Dickinson*. Boston: Little, Brown, 1924; Bartleby.com, 2000.

² The IASP is an international, multidisciplinary, non-profit professional association dedicated to furthering research on pain and improving the care of patients with pain. It is a Non-Governmental Organization (NGO) and an affiliate of the World Health Organization (WHO).

Despite these difficulties and although there remains significant controversy, there have been numerous developments, both in medical science and in our law, in the form of recognizing pain associated conditions and disorders and their effects on an individual's ability to function in the work place and to perform his or her activities of normal life. Some of the pain associated conditions and disorders that the medical and legal profession have grappled with in recent years are Chronic Pain Syndrome, Fibromyalgia and Chronic Fatigue Syndrome.

2. Chronic Pain or Chronic Pain Syndrome

Acute pain, which is generally regarded as pain that begins suddenly and arises directly from an injury or disease, can be distinguished from chronic pain.

The International Association for the Study of Pain describes chronic pain as any pain in any area of the body that lasts for over a month beyond the reasonable or expected recovery time for an injury or disease. Other medical professionals have designated a time line of three or six months after the expected recovery time, in classifying whether pain has developed into chronic pain.

Dr. David Corey, in his article entitled "Chronic Pain Syndrome: Identification and Management"³ defines chronic pain as "pain persisting for more than six months from its onset. He further expands his definition as follows⁴:

³ Corey, David: Chronic Pain Syndrome: Identification and Management 1988 9 The Advocates' Quarterly, 223

⁴ Ibid.

3. The chief complaint is of severe and prolonged pain in excess of what could be expected on the basis of organic findings.
4. At least six of the factors listed below are exhibited:
 - (a) Diagnosis of a soft tissue injury;
 - (b) Multiple symptom complaints, e.g. headaches, fatigue;
 - (c) An unsuccessful attempt to return to work;
 - (d) Guarded movements or avoidance of many activities, e.g. an invalid like life-style;
 - (e) Ingestion of multiple analgesics, tranquilizers, etc.
 - (f) Frequent and multiple physician contacts;
 - (g) Development of family and marital problems;
 - (h) A reduction in or loss of libido;
 - (i) Diffuse anger, frustration and irritability;
 - (j) Anxiety and/or depressive symptoms;
 - (k) Sleep disturbance.”

Chronic Pain Syndrome is a condition in which chronic pain has persisted over a period of time and is intense enough that it substantially interferes with a person’s ability to function and to carry on his or her activities of daily living. Chronic pain erodes the sufferer’s confidence, self-esteem, and general well-being.⁵ The defining feature here is the fact that the chronic pain has rendered the pain sufferer vocationally and/or functionally disabled.

The difficulty medical professionals have encountered with Chronic Pain Syndrome is that it often has what Dr. Manish Singh, an Assistant Professor at Pennsylvania Hahnemann University, has described as having, “a convoluted natural history, unclear etiology and often responds poorly to various therapies”⁶. According to Dr. Singh, some authors have even stated that Chronic Pain Syndrome may be a learned behavioral syndrome. The suggestion is that there may be an initial noxious

⁵ Minnesota Board of Medical Practice Update Newsletter, Spring 1997

⁶ Chronic Pain Syndrome, Manish K. Singh M.D., <http://www.e-medicine.com>

stimulus that causes pain and when the pain behaviour is rewarded, that behaviour is reinforced resulting in a continuation of the pain behaviour in the absence of the noxious stimulus.⁷

This may account for the belief by certain individuals in the medical and legal professions that the litigation process may in fact perpetuate Chronic Pain Syndrome.

⁷

Ibid.

3. Fibromyalgia

The American College of Rheumatology has provided the following classification for Fibromyalgia⁸:

1990 criteria for the classification of Fibromyalgia:

1. History of widespread pain.

Definition. Pain is considered widespread when all of the following are present: pain in the left side of the body, pain in the right side of the body, pain above the waist, and pain below the waist. In addition, axial skeletal pain (cervical spine or anterior chest or thoracic spine or low back) must be present. In this definition, shoulder and buttock pain is considered as pain for each involved side. "Low back" pain is considered lower segment pain.

2. Pain in 11 of 18 tender point sites on digital palpation.

For classification purposes, patients will be said to have fibromyalgia if both criteria are satisfied. Widespread pain must have been present for at least 3 months. The presence of a second clinical disorder does not exclude the diagnosis of fibromyalgia.

4. Chronic Fatigue Syndrome /Myalgic Encephalitis

The following is the case definition for Chronic Fatigue Syndrome as published in the Annals of Internal Medicine in 1994⁹:

⁸ Wolfe F, Smythe HA, Yunus MB, Bennett RM, Bombardier C, Goldenberg DL, et al. The American College of Rheumatology 1990 criteria for the classification of fibromyalgia: report of the multicenter criteria committee. *Arthritis Rheum* 1990;33:160---72.

⁹ Keiji Fukada; Stephen E. Straus; Ian Hickie; Michael C. Sharpe; James G. Dobbins; and Anthony Komatoff, International Chronic Fatigue Syndrome Study Group, 15 December 1994, Volume 121, Issue 12, Pages 953-959.

Fatigue:

Patients must have otherwise unexplained, relapsing fatigue that is new (not life-long); not the result of ongoing exertion; not relieved by rest; and that results in substantial decreases in levels of occupational, social, educational, or personal activities.

Symptoms:

The patient must have four or more of the following eight symptoms. Symptoms must persist for six months and the patient must not have predated fatigue.

1. Self-reported impairment of memory or concentration that affects occupational, social, educational, or personal activities.
2. Sore throat.
3. Tender cervical (neck area) or axillary (underarm area) nodes.
4. Myalgias (muscle pain).
5. Arthralgias (pain along the nerve of the joint). No redness or swelling.
6. Headache of a new type.
7. Unrefreshing sleep.
8. Post-exertional malaise, lasting more than one day.

5. Differing Perspectives

At a Continuing Legal Education conference organized by the Advocates Society of Ontario on January 12 and January 13, 1996¹⁰, various medical experts from differing fields were asked to provide their views on the recognition, treatment and management of Chronic Pain and Fibromyalgia.

Leading neurologists, psychiatrists, rheumatologists, orthopedic surgeons and physiatrists provided their clinical perspectives on Chronic Pain and Fibromyalgia and were asked to comment, in particular, upon the difficulties of 'proving and quantifying' Chronic Pain and Fibromyalgia.

¹⁰ "Practical Strategies for Advocates V" (1996) Understanding Chronic Pain, The Advocates Society of Ontario, January 12-13, 1996

The differing perspectives presented by the various experts at the conference substantiated the view of many of the experts that Chronic Pain and Fibromyalgia are complex and controversial areas.

Many of the experts also stated that while there continue to be those individuals who remain skeptical of the existence of these conditions, there are a number of specialities that have begun to recognize these conditions and are attempting to develop strategies to measure and assess the conditions and their effect on a sufferer's functioning in the work environment and in daily life.

As well, many of the experts noted that because of the multiplicity of factors, both physiological and emotional, associated with these conditions, an multi-disciplinary approach is called for.

6. Implications for Litigation

The growing recognition of these conditions in the medical community and the multi-disciplinary approach advocated has implications in the legal realm.

In general, Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome cases, whether in the context of a tort action, accident benefits claim or long-term disability action, are difficult cases and present unique challenges. This is not only because of the complexities of these medical conditions but because of the need to explain how a seemingly innocuous injury can result in a Plaintiff becoming vocationally and/or functionally disabled.

As in any personal injury action, in Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome cases, it is necessary to marshal the appropriate expert evidence in order to provide the trier of fact with a medical framework and a greater understanding of the Plaintiff's medical condition and how that condition affects the Plaintiff's life.

The divergence of medical opinions with respect to Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome renders the task of demonstrating the Plaintiff's medical condition and vocational and/or functional limitations to the trier of fact, all the more challenging.

It is useful therefore to approach the matter from a “multi-disciplinary perspective”, utilizing the evidence of various experts in appropriate fields to provide a well-rounded assessment of the Plaintiff's condition and attendant limitations.

It also is important to ensure that the right experts are selected. The experts selected should not only be competent and experienced in their field of practice, but should be experts who are respected for their objectivity and ability to render independent and unbiased opinions. Experts should be able to fulfill their primary role, which is to assist the trier of fact and should not fall into the trap of advocating for a particular position.

The role of the expert in this regard was discussed in *Toronto-Dominion Bank v. E. Goldberger Holdings Ltd*¹¹, in which the Court stated that :

[E]xperts must conduct themselves as objective neutral assistants of the court and, if they fail to fulfill this function, their testimony should be ruled inadmissible and therefore ignored after they have been eviscerated.

This is particularly important in Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome cases where there is a proliferation of medical opinions as to the cause and effect of these conditions and their implications on vocational and functional ability.

The role of Plaintiff's counsel does not end with choosing the right expert. Plaintiff's counsel must

¹¹ *Toronto-Dominion Bank v. E. Goldberger Holdings Ltd.* [1999] O.J. No. 5324

ensure that the expert is provided with all necessary arsenal in the form of medical reports and clinical notes and records obtained from the Plaintiff's treating medical practitioners. The complex nature of Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome makes it essential that an accurate medical history is obtained and provided to the expert. It is useful to provide the expert with historical medical records, usually between three to five years prior to the triggering incident (if this can be ascertained), in order to create a more accurate picture of the Plaintiff's medical condition.

It is also crucial that the medical expert be provided with copies of defence medical reports or assessments performed at the request of an insurance company so that the expert can review and comment upon the differing opinions rendered.

The role of the expert is an essential one and it is vital that the expert is placed in the best position to comment upon the Plaintiff's condition.

7. Credibility

One of the difficulties with Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome is that these conditions are primarily associated with pain which, as stated previously, is a subjective experience and difficult to measure on an objective level.

Although there have been a number of tests developed to measure pain, these tests generally require the pain sufferer to rate pain and difficulty on a subjective level. As a result, the credibility of the Plaintiff becomes a vital component in Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome cases.

The Plaintiff's credibility can be established in various ways. Lay witness accounts from family, friends and colleagues comparing the Plaintiff's pre- and post-accident conditions and the veracity of the Plaintiff's pain complaints as evidenced by pain behaviours, can be used to establish credibility.

The consistency of the Plaintiff's complaints to his or her treating doctors and the depiction of the Plaintiff as an honest and forthright individual with respect to his or her medical history can also be used to bolster the Plaintiff's credibility.

The issue of surveillance is also relevant to credibility. Surveillance is often conducted on Plaintiffs who suffer from Chronic Pain, Fibromyalgia or Chronic Fatigue Syndrome arising out of an accident or injury. The only truly detrimental surveillance is when there is stark contrast between what the Plaintiff states he or she is able to do and what is captured in the course of surveillance. Even then, surveillance often fails to capture certain pain behaviours and facial expressions which may be the only indication that an individual is suffering from pain.

8. How our Legal System has dealt with Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome

The challenges experienced by the medical profession in dealing with Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome are reflected in the decisions of our judges and arbitrators.

In *Makie v. Wolfe*¹² Madam Justice Rawlins commented upon evidence presented by Dr. McCain, an expert rheumatologist, and stated that:

¹² *Makie v. Wolfe*, (1994) 153 A.R. 81, 21 Alta. L.R. (3d) 11

Dr. McCain admitted that there is no known cause of Fibromyalgia and by that I assume he meant physical cause. At best, all he could accurately say was that there were several theories of causation that were prevalent.

In *Thompson v. Ballantyne*¹³, the Plaintiff was diagnosed with fibromyalgia following a motor vehicle accident. A motion was brought by the Defendants to dismiss the Plaintiff's claim on the basis that the Plaintiff had failed to bring herself within the exemptions arising from the statutory bar to actions for personal injuries suffered in a car accident. The Defendants argued that fibromyalgia was not a physical disease but a psychological one and accordingly, the Plaintiff was not exempt from the bar to actions for personal injuries. The court held that, on a balance of probabilities, the Plaintiff suffered from fibromyalgia, which the court viewed as a physical disease.

In *Jones v. Prudential Group Assurance Co. of England (Canada)*¹⁴, Cusinato J. commented upon the expert evidence presented and stated that “Fibromyalgia is classified as a syndrome, because science has not yet perfected an objective diagnosis for the disease”.

In *Swain v. Moore Estate*¹⁵, the Plaintiff suffered from extensive soft tissue injuries, chronic pain, post-traumatic stress, fibromyalgia, anxiety and depression as a result of a motor vehicle accident. Her husband, daughter and son asserted *Family Law Act* claims. After the accident, the Plaintiff had difficulty coping with her daily life. She had tried working in the family business but was unable to handle the pressure. Justice Patterson concluded that her injuries were catastrophic and that she was totally disabled. Her damages were assessed at \$100,000.00; \$15,000.00 was awarded to husband; \$10,000.00 to her daughter and \$5,000.00 to her son.

¹³ *Thompson v. Ballantyne* [1996] O.J. No. 4856 (Ont. Gen. Div.)

¹⁴ *Jones v. Prudential Group Assurance Co. of England (Canada)*, [1999] O.J. No. 2862, at paragraph 72

¹⁵ *Swain v. Moore Estate* [2000] O.J. No. 1628

In *Kuhne v. Minifie*¹⁶, a decision of the British Columbia Supreme Court, the Plaintiff suffered from fibromyalgia as a result of a motor vehicle accident and was no longer able to work. After proving that her fibromyalgia was caused by the motor vehicle accident, the Plaintiff was awarded general damages in the amount of \$85,000.00.

¹⁶ *Kuhne v. Minifie*, [2001] B.C. J. No. 287 (B.C.S.C.)

In *Pisciotta v. CAA Insurance Co. (Ontario)*¹⁷, Justice Thomson discusses fibromyalgia syndrome and the evidence presented by the expert witnesses for the parties. He then comments at paragraph 127 of his judgement that “there appears to be some debate in the medical community and among experts who were involved in this case regarding the existence of fibromyalgia as a bona fide medical condition”.¹⁸

Thomson J. goes on to state at paragraphs 140 and 141 as follows¹⁹:

Clearly testing for fibromyalgia is subjective because it depends on what the patient tells the doctor. Secondly, it then seems to be a mixture of subjective and objective when the patients respond or do not respond to palpitation of the tender and control points. It seems to me that if a patient has basic knowledge of the trigger and control points palpation tests because of the number of times the palpating has been done or because they have learned all about these points from printed information, then it is open for a trier of fact to conclude the tests were susceptible to manipulation and unreliable. The diagnosis may then be inaccurate.

Thus, the reliability of any medical diagnosis and prognosis depends almost entirely on the reliability, believability or credibility of what the patient tells the physician and what the physician learns from palpating.

Justice Thomson goes on to discuss the Plaintiff’s credibility and comments that he has grave reservations about the validity of the fibromyalgia diagnosis and the degree of pain and physical disability the Plaintiff said she suffered from the date of the accident.

¹⁷ *Pisciotta v. CAA Insurance Co. (Ontario)*, [2000] O.J. No. 2995

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Justice Thomson ultimately concludes that he is not satisfied on a balance of probabilities that the Plaintiff suffered an injury in the motor vehicle accident that continuously prevented her from engaging in any employment for which she was reasonably suited by education, training or experience.

This decision, in particular, reflects some of the difficulties that our courts have had with Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome cases.

The issue of Chronic Pain was dealt with differently by Arbitrator Makepeace in the Financial Services Commission of Ontario decision of *Quattrocchi v. State Farm*²⁰. In *Quattrocchi*, Arbitrator Makepeace reviewed various arbitration decisions and enunciated some general principles that have emerged from these decisions, including the following:

- (i) Where there is no objective evidence of impairment, or the objective evidence does not explain the degree of pain reported by the insured person, the insured's credibility becomes important. In assessing the insured person's subjective pain complaints, Arbitrators consider all of the circumstances, including the consistency of the insured person's complaints and apparent functional level.
- (j) In order to prove entitlement to weekly benefits, an insured must show that his or her disability resulted from the accident. Arbitrators have consistently said that the accident need not be the only cause of the insured's problems, but must be a significant or material contributing factor. Accordingly, even if the Applicant's own attitudes or inaction have delayed his or her recovery, he or she may still be entitled to benefits, if the accident remains the more significant factor.
- (k) It is not sufficient to dismiss a chronic pain claim on the basis that returning to work would not harm the applicant.

²⁰

Quattrocchi and State Farm Mutual Automobile Insurance Co. (OIC A-006854), September 29, 1997)

Some of the principles elucidated in the *Quattrocchi* decision have been applied in other decisions²¹ where claimants have been diagnosed with Chronic Pain or Fibromyalgia subsequent to a motor vehicle accident.

In the realm of workers' compensation benefits, there have been significant strides with respect to recognizing claims made by workers disabled by Chronic Pain.

²¹

Elham Raymond and Halifax Insurance Company (FSCO- A97-001629), March 8, 1999

In the recent decision of *Nova Scotia (Worker's Compensation Board) v. Martin*²², the Supreme Court of Canada ruled that the exclusion of persons disabled by chronic pain from the usual worker's compensation scheme violates s.15(1) of the *Canadian Charter of Rights and Freedoms* (the equality provision)²³.

The specific provision before the court was s.10 of the *Nova Scotia Worker's Compensation Act*, S.N.S. 1994-95, c. 10, as amended, which denied full benefits to workers with chronic pain and only permitted access to limited benefits.

In the introduction to his decision, Justice Charles Gonthier writes:

Chronic pain syndrome and related medical conditions have emerged in recent years as one of the most difficult problems facing workers' compensation schemes in Canada and around the world. There is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury, and whose existence is not supported by objective findings at the site of the injury under current

²² *Nova Scotia (Worker's Compensation Board) v. Martin*, [2003] S.C.J. No. 54

²³ S. 15, *Canadian Charter of Rights and Freedoms, Constitution Act, 1982* (79), Enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, which came into force on April 17, 1982

medical techniques. Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real. While there is at this time no clear explanation for chronic pain, recent work on the nervous system suggests that it may result from pathological changes in the nervous mechanisms that result in pain continuing and non-painful stimuli being perceived as painful. These changes, it is believed, may be precipitated by peripheral events, such as an accident, but may persist well beyond the normal recovery time for the precipitating event. Despite this reality, since chronic pain sufferers are impaired by a condition that cannot be supported by objective findings, they have been subjected to persistent suspicions of malingering on the part of employers, compensation officials and even physicians.

This decision represents a clear recognition of the disability that can be experienced by individuals suffering from chronic pain and as such, constitutes a positive step for those who may be seeking compensation as a result of their disabilities.

9. The Response of Insurers

Insurers faced with claims from individuals diagnosed as suffering from Chronic Pain, Fibromyalgia or Chronic Fatigue Syndrome arising out of a motor vehicle accident or other injury, or those claiming disability benefits as result of these conditions, should not immediately dismiss these claims.

In order to avoid claims for bad faith, insurers must ensure that claims are handled promptly and that relevant medical reports are obtained and carefully reviewed. Insurers should write to the claimant's treating doctors before any decision is made to terminate benefits and the opinions of the treating doctors should be carefully considered by the insurer.

If appropriate, the insurer should arrange for relevant medical experts to assess the claimant and comment on the nature of the claimant's medical condition and how that condition affects the claimant's vocational and/or functional abilities. A job site analysis is often useful in this regard as the analysis will establish the parameters within which the claimant's disabilities can be analyzed.

A decision denying or terminating benefits based upon medical reports that merely dismiss the claimant's complaints because these complaints are not supported by objective findings, may be subject to serious scrutiny at a later date.

Failing to properly investigate the claimant's medical condition and disabilities could potentially expose the insurer to a claim for bad faith, particularly where all of the claimant's treating practitioners are attesting to the claimant's extensive disabilities and functional limitations and the insurer has not obtained any contradictory medical reports in this regard.

In light of the growing recognition of Chronic Pain, Fibromyalgia, Chronic Fatigue Syndrome and other pain- associated conditions and their potentially disabling effects, insurers should be prepared to resolve these types of cases for realistic values.

If the accident or injury has rendered the Plaintiff unemployable or unable to return to his or her previous employment, the Plaintiff, depending on the nature of his or her employment, could potentially be awarded significant damages. Furthermore, depending on the extent of the Plaintiff's disability, there may be a significant award for the cost of future care.

Accordingly, when participating in a mediation, an insurer should ensure that the necessary investigations have been conducted and that sufficient medical information and documentation has been obtained with respect to the claimant's medical condition and attendant disabilities.

Our judges and judges have and continue to award aggravated and/or punitive damages and special awards where an insurer has acted in bad faith and failed to properly investigate and consider a claim.

In *Clarfield v. Crown Life Insurance Co.*²⁴, the Plaintiff claimed against Crown Life Insurance for payment of disability benefits pursuant to an insurance policy. The Plaintiff also claimed aggravated and punitive damages. Justice Juriansz awarded the Plaintiff benefits under the policy of insurance on the basis that the Plaintiff was totally disabled within the meaning of the policy until he commenced a training program. Justice Juriansz also awarded aggravated damages in the amount of \$75,000.00 and punitive damages in the amount of \$200,000.00, commenting that the insurer had failed to assess the Plaintiff's claim in a balanced and reasonable manner and had failed to act fairly and promptly when it dealt with the Plaintiff's claim.

The failure of an insurer to act in good faith was also addressed in *Whiten v. Pilot Insurance Co.*²⁵ In that case, a fire completely destroyed the insured's home and its contents. Although the insurer initially paid \$5000.00 in living expenses and the family's rent for a couple of months, the insurer cut off rent abruptly without notice and refused to make further payments alleging that the family had intentionally set fire to their home. The Supreme Court of Canada held that the jury's award of punitive damages in the amount of \$1 million was within rational limits given that the insurer's conduct was exceptionally reprehensible and gave rise to an actionable wrong in addition to the breach sued upon.

²⁴ *Clarfield v. Crown Life Insurance Co.* [2000] O.J. No. 4074 (S.C.J.)

²⁵ *Whiten v. Pilot Insurance Co.* [2002] S.C.J. No. 19 (S.C.C.)

In *Fimiani and Liberty Mutual Insurance Company*²⁶, a decision of the Financial Services Commission of Ontario, the insurer was liable to pay a special award based on its failure to accept the existence of the Plaintiff's chronic pain condition and based upon its unreasonable conduct in withholding benefits.

10. Conclusion

Although the subject of pain remains an elusive and controversial one, there has been a growing recognition in recent years of pain-associated conditions such as Chronic Pain, Fibromyalgia and Chronic Fatigue Syndrome, which may develop as a result of the claimant's involvement in an accident or as a result of an injury.

As a result, relying too heavily on reports that merely dismiss the claimant's complaints because these complaints are not supported by objective findings, may prove detrimental at the end of the day.

In order to avoid claims of bad faith and in order to encourage effective mediation, relevant documentation and information should be obtained and an effort made to have the claimant assessed by appropriate experts who can comment effectively on the claimant's disabilities on a functional and vocational level.

In recent years our legal system has moved towards encouraging and facilitating early resolution and at the end of the day, the aim of all parties should be to ensure that deserving claimants receive the compensation to which they are entitled.

²⁶

Fimiani and Liberty Mutual Insurance Company, (FSCO A97-001518), January 11, 2000