**The Canadian Institute's 8th Annual**
**Litigating Disability Insurance Claims Conference**

# *Understanding and Managing Cases Involving Chronic Pain Syndrome, Chronic Fatigue Syndrome and Fibromyalgia: The Plaintiff's Perspective*

*Richard M. Bogoroch and Melinda J. Baxter*

*Bogoroch & Associates*

**November 8, 2006**

**Introduction**

*The world is full of suffering, it is also full of overcoming it.*
*- Helen Keller*

*The greatest evil is physical pain.*
*- St. Augustine*

The subject of pain remains an elusive and controversial one, largely due to its subjective experience, which poses difficulty in determining its etiology and for diagnosis. Chronic nonmalignant pain is more difficult to understand, assess and treat than acute pain or cancer pain. The reality is that most of these patients cannot be cured, and some remain completely intractable to traditional medical treatment. Those that suffer from chronic pain syndrome, fibromyalgia and chronic fatigue syndrome should be seen regularly for trials of any reasonable, safe approach, for psychological support and provided coping strategies that may make life more tolerable.

A diagnosis of a pain-associated disorder includes components of both a physical and emotional or psychological nature. What is of primary importance, and often the most significant barrier, is the largely subjective experience of the disorder. This poses a difficulty for both the medical and legal professions when faced with the difficult task of determining the extent, duration and effect of chronic pain on the Plaintiff. Despite these difficulties, however, there have been numerous developments, both in the medical and legal communities in understanding pain associated disorders including Chronic Pain Syndrome, Fibromyalgia and Chronic Fatigue Syndrome.

**Chronic Pain Syndrome**

Chronic pain is defined as pain that persists past one month or past the usual time for the particular disorder to heal. The patient usually does not demonstrate evidence of autonomic hyperactivity (pallor, sweating, increased heart rate and breathing).[1]

Others have specifically outlined a timeline in association with the onset of symptoms. Dr. David Corey in his article entitled "Chronic Pain Syndrome: Identification and Management" defines chronic pain as pain that has persisted for more than **six months from** onset and which has the following symptoms (emphasis added):

1. The chief complaint is of severe and prolonged pain in excess of what could be expected on the basis of organic findings.
2. At least six of the factors listed below are exhibited:
    a. Diagnosis of 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.[2]

---

[1] Dr. Peter N. Watson, "Practical Strategies for Advocates V" (1996) Understanding Chronic Pain, The Advocates Society of Ontario, January 12-13, 1996.

[2] Corey, David: Chronic Pain Syndrome: Identification and Management 1988, 9 The Advocates' Quarterly 223.

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.[3] The defining feature is that chronic pain has rendered the individual vocationally and/or functionally disabled.

***Anatomy and Physiology***

Pain begins with stimuli that can potentially produce tissue damage resulting in chemical or mechanical stimulation of free nerve endings. Painful impulses are relayed centrally by small diameter fibers in the peripheral nerve to the dorsal horn of the spinal cord. In this area important modification of the painful message may occur. The impulse crosses to the other side of the spinal cord and then projects to the opposite side of the brain. Spinal transmission of pain is, however, more complex and may involve both rapidly and slowly conducting systems in the lateral column. The great importance of the slowly conducting system is its connection to the limbic system (the emotional brain) that provides an anatomical basis for the greatly disturbed moods of many chronic pain patients.[4]

---

[3] Minnesota Board of Medical Practice Update Newsletter, Spring 1997.

[4] *Ibid, supra,* note 1.

An important study conducted in 1973, revealed an important discovery in the treatment of pain and in understanding the neurotransmitters that affect the experience of pain. In 1973, opiate (morphine) receptors in the human brain and spinal cord, as well as naturally occurring opiates, the enkephalins and endorphins were discovered. It was determined that these substances are not only located in association with pain pathways, but are also involved in the descending pain-inhibitory system. These descending systems are one way that morphine is able to relieve pain, and also involve the neurotransmitters serotonin and noradrenaline. This led to the hypothesis of how antidepressants, like amitriptyline, have an analgesic action which is independent of their antidepressant effect.[5]

***Pain Assessment***

Assessing chronic pain is difficult because all pain is subjective and communication difficulties may arise, especially in cases where the patient speaks a different language as that of the assessor. Other difficulties include anxiety, hearing impairment and physician/nurse biases. Biases may include the belief that psychogenic pain equates to malingering, while, in fact, only malingerers fabricate pain. Health practitioners also frequently assess all pain as acute pain, whereas patients with chronic pain usually do not show the "fight-or-flight" response of acute pain.[6]

---

[5] *Ibid.*

[6] *Ibid.*

To accurately diagnose and optimally manage chronic pain there is no substitute for the following:

(a) A detailed history, which should include:

(i) Pain characteristics;
(ii) The effect of the pain on patient lifestyle;
(iii) The patient's cognitive/affective responses;
(iv) The implications for relationships with family members and significant others; and,
(v) The previous pain experiences of the individual and family members

(b) A complete physical examination; and,

(c) Appropriate laboratory investigations.[7]

It is important to note, that from a management perspective, recognition and improvement of disturbed sleep and mood may in themselves help to relieve the chronic painful state.

There are a number of treatments currently being used to care for those diagnosed with chronic pain including use of opioids, use of topical agents, use of antidepressant as analgesics, use of NSAIDs (nonsteriodal anti-inflammatory drugs), use of tranquilizers, TENS (transcutaneous electrical nerve stimulation), acupuncture, biofeedback, hypnosis, placebos, surgery and psychosocial management.[8]

Recently, researchers at Massachusetts General Hospital have found the first evidence of physical abnormality underlying the chronic pain condition called reflex sympathetic dystrophy or Complex Regional Pain Syndrome (CRPS). They report that skin affected by CRPS pain appears to have lost

---

[7] *Ibid.*

[8] *Ibid.*

some small-fiber nerve endings, a change characteristic of other neuropathic pain syndrome.[9]

The authors of the study discuss CRPS and note that it is the current name for a baffling condition first described in the 19th century in which some patients are left with severe chronic pain and other symptoms – swelling, excess sweating, change in skin color and temperature – after what may be a fairly minor injury. The fact that patients' pain severity is out of proportion to the original injury is a hallmark of the syndrome, and has led many to doubt whether patients' symptoms are caused by physical damage or by a psychological disorder.[10]

In their study the authors hypothesized that because small-fiber nerve endings transmit pain messages and control skin color and temperature and because damage to those fibers is associated with other painful disorders, they thought that those fibers might also be involved with CRPS. The skin biopsies showed that, the density of small-fiber nerve endings in CRPS patients were reduced from 25 to 30 percent in the affected areas compared with unaffected areas. No nerve losses were seen in samples from the control participants, suggesting that the damage was specific to CRPS, not to pain in general. Tests of sensory function performed in the same areas found that a light touch or slight heat was more likely to be perceived as painful in the affected areas of CRPS patients than in the unaffected areas, also indicating abnormal neural function.[11]

---

9 "Study Finds Nerve Damage in Previously Mysterious Chronic Pain Syndrome", Sue McGreevey, January 31, 2006, http://www.innovations-report.com/html/reports/studies/report-54589.html

10 *Ibid.*

11 *Ibid.*

These findings have now identified a cause for CRPS and takes it out of the realm of a so-called "psychosomatic illness". Traditionally, one of the great frustrations facing CRPS patients has been the lack of an explanation for their symptoms. Many people, including a number of health practitioners, are skeptical of their motivations, and some physicians are reluctant to prescribe pain medications when the cause of pain is unknown. This study suggests that CRPS patients should be evaluated by neurologists who specialize in nerve injury and be treated with medications or procedures that have proven effective for other nerve-injury pain syndromes.The next step is to investigate why some people are left with CRPS after injuries that do not cause long-term problems for most patients and to determine the best way of diagnosing the syndrome and evaluate potential treatments.[12]

**Fibromyalgia**

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

**"(a) 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.

**(b) 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 three months. The presence of a second clinical disorder does not exclude the diagnosis of fibromyalgia."[13]

---

12 *Ibid.*

13 F. Wolfe, et al., " The American College of Rheumatology 1990 Criteria for the Classification of Fibromyalgia: Report of the Multicenter Criteria Committee." (1990 Feb) 33(2) Arthritis Rheum 160-72.

**Chronic Fatigue Syndrome**

The following is the case definition for Chronic Fatigue Syndrome as published in the Annals of Internal Medicine in 1994:

**"Fatigue:**

Patients must have otherwise unexplained, relapsing fatigue that is new (not lifelong); 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.

(a) Self-reported impairment of memory or concentration that affects occupational, social, educational or personal activities.
(b) Sore throat.
(c) Tender cervical (neck area) or axillary (underarm area) nodes.
(d) Myalgias (muscle pain).
(e) Arthralgias (pain along the nerve of the joint). No redness or swelling.
(f) Headache of a new type.
(g) Unrefreshing sleep.
(h) Post-exertional malaise, lasting more than one day."[14]

[14] F. Keiji, et al., International Chronic Fatigue Syndrome Study Group, 15 December 1994, Volume 121, Issue 12, pages 953-959.

**Implications for Litigation**

Cases involving pain-associated disorders, whether in the context of a tort action, accident benefits claim or long-term disability action, present difficult and unique challenges, not only because of the complexities of this medical condition but also because of the need to explain how an injury that can be assessed subjectively, and without objective medical evidence, can render an individual vocationally and/or functionally disabled.

***Judicial Treatment of Pain-associated Disorders***

Over the last decade, judicial decisions have evolved to recognize pain-associated disorders as disabilities. However, there are still judges and adjudicators that look at these types of disorders with skepticism.

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. After the accident, the Plaintiff, despite numerous attempts was unable to continue working in the family business and had difficulty coping with her activities of daily living. Ultimately, Justice Patterson concluded that her injuries were catastrophic and that she was totally disabled. The Plaintiff's damages were assessed at $100,000.00.

---

[15] [2000] O.J. No. 1628.

In *Jones v. Prudential Group Assurance Co. of England (Canada)*[16], Justice Cusinato commented upon the expert evidence presented and states that "Fibromyalgia is classified as a syndrome, because science has not yet perfected an objective diagnosis for the disease."

In the FSCO decision, *Quattrocchi v. State Farm*[17], Arbitrator Makepeace reviewed and highlighted some general principles that have emerged in chronic pain cases. She notes the following:

"(a) Where there is no objective evidence of impairment, or the objective evidence does not explain the degree of pain reported by the insured person, credibility is paramount. In considering the insured person's credibility all circumstances must be considered, including the consistency of their complaints and apparent functional level;

(b) In order to prove entitlement to weekly benefits, an insured must show that his/her disability resulted from the accident. The accident need not be the only cause, but must be a significant or material contributing factor. Therefore, even if the insured person's own attitudes or inaction has delayed his/her recovery, he/she may still be entitled to benefits, if the accident remains the more significant factor;

(c) It is not sufficient to dismiss a chronic pain case on the basis that returning to work would not harm the applicant."

More recently, in the decision of *Nova Scotia (Worker's Compensation Board) v. Martin*[18], the Supreme Court of Canada recognized chronic pain as a legitimate condition and ruled that the exclusion of a person disabled by chronic pain from the usual worker's compensation scheme violated section 15(1) of the *Canadian Charter of Rights and Freedoms*. In this case the Nova Scotia Worker's Compensation Board had denied full benefits to a worker diagnosed with chronic pain and only permitted limited access to benefits.

---

16 [1999] O.J. No. 2862, para. 72.

17 (OIC A-006854), September 29, 1997.

18 [2003] S.C.J. No. 54 (S.C.C.)

Justice Gonthier wrote:

> "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 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."[19]

This decision represents clear recognition of those suffering from chronic pain and the existence of this disorder.

Subsequent decisions have acknowledged those suffering with pain-associated disorders and recognized their suffering in significant general damage awards. In *Peloso v. 778561 Ontario Inc.*[20], the Plaintiff suffered from soft tissue injuries, chronic pain, headaches and pain in her back as a result of a motor vehicle accident. After the accident, the Plaintiff, attempted to implement work plans without success and had difficulty coping with her activities of daily living. Ultimately, Justice Aitken concluded that the Plaintiff suffered from chronic pain and was impaired in many aspects of her life as a result of the motor vehicle accident. The Plaintiff's general damages were assessed at

---

19 *Ibid.*

20 [2005] O.J. No. 2489.

$80,000.00 before deduction of 30% due to the Plaintiff's pre-existing condition and a further 30% for inadequate mitigation, leaving a net general damage award of $24,200.00.

In *Hartwick v. Simser*[21], a mother, father and daughter were involved in a motor vehicle accident, wherein the family's vehicle was rear-ended at high speed. Liability was admitted. The mother suffered permanent and disabling chronic pain in her spine as well as post-traumatic stress disorder and anxiety disorder. She did not return to her pre-accident occupation but returned to full-time sedentary work. The daughter suffered permanent and disabling chronic pain in her spine as well as chronic anxiety and depression that prevented her from pursuing post-secondary education. Both the mother and daughter's general damages were assessed at $85,000.00.

***Fidler v. Sun Life - A Fresh Approach***

The Supreme Court of Canada's decision in *Fidler v. Sun Life*[22] is an important decision for those suffering from pain-associated disorders. The Plaintiff was insured under a group policy that included long-term disability benefits. At age 36, she became ill and was diagnosed with chronic fatigue syndrome and fibromyalgia and began to receive long-term disability benefits. The plaintiff's benefits were terminated and she initiated a lawsuit. Claims were also made for both aggravated and punitive damages.

---

21 [2004] O.J. No. 4315.

22 [2006] S.C.J. No. 30.

One week before the trial was scheduled to start, the defendant offered to reinstate benefits and pay all arrears due and owing with interest. The issue remaining was the plaintiff's entitlement to damages. The plaintiff was awarded $20,000.00 in aggravated damages for mental distress at trial. On appeal, the Court of Appeal unanimously upheld this award and an additional $100,000.00 was awarded in punitive damages. Subsequently, in another unanimous decision, the Supreme Court of Canada, allowed the appeal in part and only maintained the award of $20,000.00 for aggravated damages.

In this case, the Supreme Court of Canada reviews the benefits to and the contemplations of the insured when entering into insurance contracts. The Court states that established principles suggest that

> "...as long as the promise in relation to state of mind is a part of the bargain in the reasonable contemplation of the contracting parties, mental distress damages arising from its breach are recoverable...**We conclude that the "peace of mind" class of cases should not be viewed as an exception to the general rule of the non-availability of damages for mental distress in contract law, but rather as an application of the reasonable contemplation or foreseeability principle that applies generally to determine the availability of damages for breach of contract."**[23] (emphasis added)

The Court confirmed that the object of a disability insurance contract is to secure a psychological benefit that brings the prospect of mental distress upon breach is within the reasonable contemplation of the parties. They stated that the contract

> "...was not a mere commercial contract. It is rather a contract for benefits that are both tangible, such as payments, and **intangible, such as knowledge of income**

---

[23] *Ibid*, paras 48-49.

> **security in the event of disability. If disability occurs and the insurer does not pay when it ought to have done so in accordance with the terms of the policy, the insurer has breached the reasonable expectation of security."**[24] (emphasis added)

The Court goes on to state that:

> "People enter into disability insurance contracts to protect themselves from this very financial and emotional stress and insecurity. An unwarranted delay in receiving this protection can be extremely stressful."[25]

The Court ultimately concluded that merely paying arrears and interest did not compensate for the years the Plaintiff was without benefits.

It is also important to note, on review of this decision, that both the Court of Appeal and the Supreme Court of Canada, have again acknowledged and have given credence to pain-associated disorders. This decision, as well as the Supreme Court of Canada's decision in *Martin*, as referenced above, should give chronic pain survivors great comfort in knowing that the highest Court in Canada recognizes the legitimacy of their suffering.

***Litigating Cases Involving Pain-Associated Disorders***

Plaintiff's Pre-Accident History

A thorough and complete analysis of the Plaintiff's pre-accident history is vital in litigating and developing a case involving pain-associated disorders. Every effort must be made to establish a

---

[24] *Ibid*, para 56.

[25] *Ibid*, para 58.

contrast between the plaintiff's health, activities, employment and social relationships prior to the accident and the significant changes that have occurred since the accident.

While a client with no significant pre-accident medical history is ideal, this is rarely the case. It is therefore important for Plaintiff's counsel to obtain and review the client's pre-accident clinical notes and records, the client's decoded OHIP summary and any compensation claims prior to Examinations for Discovery. A Plaintiff with a history of numerous medical complaints, will have a more difficult time proving causation and establishing the validity of his/her claims. In cases where the Plaintiff's family physician is not supportive, the Plaintiff may be well advised to choose an alternative physician who is more compassionate and understanding of his/her condition. However, if, notwithstanding his/her pre-accident medical history the Plaintiff was able to work in a full-time capacity and to carry on an otherwise independent and productive lifestyle, the argument can be made that the accident is the source of the Plaintiff's disability and not his/her pre-existing conditions.

This highlights the importance of the Plaintiff's pre-accident work history. A Plaintiff with a strong work history, a highly demanding pre-accident occupation, a history of continuous employment and no significant pre-accident work difficulties will be more credible when describing his/her inability to work. Therefore, in all cases it is imperative that Plaintiff's counsel contact the client's pre-accident employer to obtain the client's employee file, as well as a detailed job description and information regarding regular work hours, including any overtime hours. It is also strongly advisable that Plaintiff's counsel obtain statements from supervisors or co-workers, supporting the client's pre-

accident work ethic and job performance.

The value of lay and character witnesses, namely the Plaintiff's family and friends, cannot be overemphasized, and are vital to the proper handling of a chronic pain case. Often family and friends can provide evidence that clearly demonstrates the changes in the personality and behaviour of the Plaintiff, demonstrated in photographs or videotapes that show the Plaintiff as a previously high-functioning individual, reinforcing the Plaintiff's credibility. Further, in discussions with both the Plaintiff, and family and friends, a history of pre-accident social and athletic activities emerges. This evidence will help to demonstrate the Plaintiff as a well-rounded individual who can no longer perform previously pleasurable activities, in addition to his/her inability to return to employment.

Consulting the Right Expert and the Information to be Provided

It is important to arrange medical/legal assessments with experts who are well-respected, experienced and knowledgeable about chronic pain and fibromyalgia. In cases involving pain-associated disorders, rheumatologists and/or physiatrists possess the skill, expertise and experience indispensable to the proffering of expert opinions which will assist the Court in understanding this invisible illness.

If all relevant information is not provided to the expert, his/her opinion may be weakened or undermined. Provision of the following information will help to ensure that a complete and detailed expert report is received. It is essential that the expert be provided with all **pre- and post-accident**

**medical records**, going back years prior to the accident or termination of benefits, as well as any defence medical reports, DACs and IMEs. The expert should also be provided with copies of any prior compensations claims, a description of any previous traumatic event and any relevant surveillance evidence. Failure to provide the expert with this information may lead to his/her credibility being attacked and little weight being given to his/her opinion.

Finally, once all medical opinions have been obtained, counsel should arrange for the Plaintiff to be assessed by a vocational expert to comment on future employability. This expert should also be highly qualified and experienced, and should be provided with all aforementioned documentation, as well as the plaintiff's employment file, detailed job description and any other information regarding the plaintiff's pre-accident job duties. As in the case of the medical expert, the vocational expert must be advised of the legal test and considerations to be applied. They must be asked to comment on the plaintiff's ability to work competitively and his/her ability to perform his/her job duties in a consistent and regular basis. This is especially important in chronic pain cases, as the plaintiff's ability to perform tasks due to the fluctuation of physical tolerances will vary from day to day.

Preparing and Briefing your Client for Discovery

A thorough and complete briefing of a Plaintiff for their Examination for Discovery is fundamental. The Examination for Discovery process is the opportunity for the other side to evaluate your client, to determine how he/she will stand up on cross-examination, to make assessments and judgments

about his/her credibility and to advise the insurance company about the strengths and weaknesses of your case. Even if the medical evidence strongly supports the plaintiff's theory of the case, if he/she comes across as unprepared, deceitful, evasive or equivocal, the case could be irreparably damaged. Witness preparation is therefore critical to achieving a successful outcome in the litigation.

There is a tendency by some to exaggerate symptoms or to exhibit pain behaviours such as grimacing, sighing or frequent movements in an attempt to convince others what they are feeling. It should be explained to the plaintiff that it is up to counsel to persuade the trier of fact that the plaintiff is disabled and that the plaintiff's obligation is to be a straightforward, honest and truthful witness. It should also be highlighted to the Plaintiff in preparation for their discovery that they should not categorically deny pre-accident symptoms when questioned about them. In preparation, counsel should review all of the Plaintiff's pre-history to ensure that anything that may have been forgotten is reviewed. The Plaintiff should also be advised to avoid categorical responses to any question.

The Plaintiff should also be reminded about the high probability that surveillance has been undertaken at the briefing for their Examination for Discovery. This again highlights the importance of not giving categorical answers to questions asked. Often, questions will be asked by defence counsel specifically relating to evidence that is outlined in surveillance reports or depicted in surveillance videotapes, CDs, DVDs or photographs.

Surveillance

At the Defendant's discovery it is important to obtain details of any surveillance and/or investigation that has been undertaken on the Plaintiff. If asked, defence counsel is obliged to provide the following:

(a) The particulars of the person conducting the surveillance and/or investigation;
(b) The time(s), date(s) and place(s) where the surveillance and/or investigation was conducted;
(c) A summary of the surveillance and/or investigation, including a description of the Plaintiff's activities and the observations made by the investigator.

If defence counsel refuses to provide you with this information, bring a motion to compel disclosure of this evidence. Defence counsel is not required, on discovery, to produce the actual report, videotapes and/or photographs taken during surveillance. However, if defence counsel intends to rely on same at trial they must be provided.

Mediation

Mediation is an effective tool which can assist in the early resolution of cases. However, counsel must determine the appropriate time to mediate and must ensure that all necessary reports and records have been obtained prior to mediation to increase the chances of settlement. Evidence required at mediation includes: medical reports (both those of treating practitioners and medical/legal reports); vocational reports; accounting reports; supportive statements from employers and/or friends and family, photographs, videotapes and performance evaluations.

In addition to building a strong and supportive case for the Plaintiff, Plaintiff's counsel must also be prepared at mediation to address the Defendant's case. Defence expert reports must have been reviewed and commented upon by the Plaintiff's experts and surveillance must have been reviewed and addressed.

In handling mediations for cases involving pain-associated disorders, it is important to note that Plaintiff's counsel should emphasize that individuals with these disorders are not invalids, and while they may be able to perform some tasks, some of the time, the ability to perform those tasks on a regular and competitive basis, is significantly and permanently impaired.

**Conclusion**

Over the past several years, there have been numerous developments, both in medicine and law, in both treating and recognizing pain associated disorders including Chronic Pain Syndrome, Fibromyalgia and Chronic Fatigue Syndrome, and their effects on an individual's ability to function. In fact, very recently, as outlined above, researchers at Massachusetts General Hospital have found the first evidence of physical abnormality underlying the chronic pain condition. This is a very positive and reassuring finding for those suffering from this condition.

By preparing a thoroughly researched and developed case, Plaintiff's counsel can achieve fair and just results for clients suffering from pain-associated disorders. This is accomplished by building a case based on the Plaintiff's entire medical, social and employment history, retaining well-

respected experts who are provided with all the relevant information required to prepare a fully informed report and ensuring that the Plaintiff is fully prepared for the discovery process.

As new findings emerge, and objective evidence of these conditions become accepted, those diagnosed with pain-associated disorders will no longer be treated with skepticism.