2009

Connie Florez v. Schindler Elevator Corporation : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CONNIE FLOREZ, Appellee, vs. SCHINDLER ELEVATOR CORPORATION, Appellant.	20090299-CA No. ~~20080573~~-CA

BRIEF OF APPELLANT

Appeal From the Second Judicial District Court, Weber County
Case No. 050902302, Honorable Ernie Jones and Brent W. West

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ORAL ARGUMENT REQUESTED

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CONNIE FLOREZ, Appellee, vs. SCHINDLER ELEVATOR CORPORATION, Appellant.	No. 20080373-CA

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JURISDICTION

Jurisdiction is proper in this Court pursuant to Utah Code Ann. § 78-2a-3.

ISSUES PRESENTED FOR REVIEW, STANDARDS OF REVIEW, AND PRESERVATION BELOW

Issue 1: Whether the trial court erred in denying Schindler's Motion for Summary Judgment.

Preservation in District Court: Defendant's Motion for Summary Judgment and supporting memorandum (R. 0080-158); Reply Memorandum in Support of Defendant's Motion for Summary Judgment (R. 0225-264); oral argument on Defendant's Motion for Summary Judgment (R. 907).

Standard of Review: The denial of a motion for summary judgment is reviewed for correctness. *See Barnes v. Clarkson*, 2008 UT App 44 ¶ 8.

Issue 2: Whether the trial court erred in denying Schindler's Motion to Strike Affidavit of Connie Florez.

Preservation in District Court: Schindler's Motion to Strike Affidavit of Connie Florez and supporting memorandum (R. 0218-224); Reply Memorandum in Support of Motion to Strike Affidavit of Connie Florez (R. 0301-07); oral argument on Schindler's Motion to Strike Affidavit of Connie Florez (R. 907).

Standard of Review: "There is no established standard for reviewing a decision striking affidavits. However, since an affidavit is simply a method of placing evidence of a fact before the court, we look to our prior decisions regarding the admission of evidence

more generally. The standard of review for the admission of evidence varies depending on the type of evidence at issue." *Murdock v. Springville Mun. Corp.*, 1999 Utah LEXIS 47 ¶ 25.

Issue 3: Whether the trial court erred in denying Schindler's Motion in Limine to Exclude Expert Witness Testimony.

Preservation in District Court: Defendant Schindler Elevator Corporation's Motion in Limine to Exclude Expert Witness Testimony and supporting memorandum (R. 0352-409); Defendant Schindler Elevator Corporation's Reply to Plaintiff's Opposition to Schindler's Motion in Limine to Exclude Expert Testimony (R.0443-450); oral argument at pretrial conference on Defendant Schindler Elevator Corporation's Motion in Limine to Exclude Expert Witness Testimony. (R 0451)[1]

Standard of Review: The denial of a motion in limine is reviewed "under an abuse of discretion standard." *Walker v. Hansen*, 2003 UT App 237 ¶ 12.

Issue 4: Whether the trial court erred in entering the Judgment of Jury Verdict and denying Schindler's Motion for a Directed Verdict, Judgment Notwithstanding the Verdict and Motion for a New Trial.

Preservation in District Court: Schindler Elevator Corporation's Motion for Directed Verdict, Judgment Notwithstanding the Verdict and for a New Trial and supporting memorandum (R. 0671-702); oral motion for directed verdict after close of plaintiff's case (R. 908 p. 563-594)

Standard of Review: "The applicable standard of review regarding a movant's challenge to a trial court's denial of a motion for a directed verdict is as follows: [an appellate court will] test

[1] Arguments on Schindler Elevator Corporation's Motion in Limine were conducted in chambers. No transcript of the argument exists.

that challenge by viewing the evidence and all reasonable inferences that may fairly be drawn therefrom in the light most favorable to the party moved against, and will sustain the denial if reasonable minds could disagree with the ground asserted for directing a verdict." *White v. Fox*, 665 P.2d 1297, 1300 (Utah 1983)

The denial of a motion for judgment notwithstanding the verdict will be reversed if "viewing the evidence in the light most favorable to the party who prevailed, we conclude that the evidence is insufficient to support the verdict." *Hansen v. Stewart*, 761 P.2d 14, 17 (Utah 1988).

The denial of a motion for a new trial will be reversed if, "viewing the evidence in the light most favorable to the party who prevailed, we conclude that the evidence is insufficient to support the verdict." *Hansen v. Stewart*, 761 P.2d 14, 17 (Utah 1988).

DETERMINATIVE PROVISIONS

The interpretation of the following rules is determinative of this appeal:

Utah Rule of Civil Procedure 50:

> (a) *Motion for directed verdict; when made; effect.* A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefore. The order of the court granting a motion for a directed verdict is effective without any assent of the jury
>
> (b) *Motion for judgment notwithstanding the verdict.* Whenever a motion for a directed verdict is made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later then ten days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment

entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Utah Rule of Civil Procedure 56:

(a) *For claimant.* A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) *Motion and Proceedings thereon.* The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Utah Rule of Civil Procedure 59:

(a) *Grounds.* Subject to the provisions of Rule 61, a new trial may be granted to all of any of the parties on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(a)(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a

determination by chance or as a result of bribery, such misconduct may be provided by the affidavit of any one of the jurors.

(a)(3) Accident or surprise, which ordinary prudence could not have guarded against.

(a)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

(a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below

This is a personal injury case in which plaintiff alleged that on June 15, 2004 (herein the Date of the Incident or DOI) Schindler's prior negligence in servicing an elevator caused it to malfunction, causing her injury and damages more fully described below. (R. 0002) The elevator stopped, due to a sensor malfunction, with Plaintiff inside. The elevator doors were opened by third-parties in less than an hour, at which time plaintiff exited the elevator, fainted and fell to the floor. (R. 255) Plaintiff claimed that the fall resulted in injuries to her ribs and was the ***cause*** of a condition known as benign positional paroxysmal vertigo ("BPPV"), the primary symptom of which is dizziness. (R. 42-43) Plaintiff, however, offered no expert testimony either before or at trial to establish that the fall was the cause of her BPPV. Indeed, despite incontrovertible evidence that plaintiff's BPPV condition was present and treated on several occasions years before this incident, plaintiff denied the condition was preexisting and insisted it was first caused by the fall upon exiting the elevator. (R Defendant's Exhibit Binder Tabs 118 and 30A) (See also discussion of Plaintiff's Medical History, infra, pp. 10-11) Although plaintiff's expert witness performed an independent medical examination of plaintiff and submitted a report, the report contained no opinions or conclusions regarding the cause of plaintiff's injuries. Before trial, the only evidence of causation presented by plaintiff was plaintiff's own affidavit testifying that she suffered from significant vertigo and dizziness after the fall. (R. 0179-181)

Schindler moved for summary judgment on the issue of causation, arguing that plaintiff had failed to present necessary expert medical evidence to establish causation

concerning her BPPV. (R. 0080-158) Schindler also moved to strike plaintiff's affidavit on the basis that her statements as to causation of her medical condition lacked foundation since she was not qualified to render that medical opinion. (R. 0218-222) The trial court denied Schindler's Motion for Summary Judgment and Motion to Strike Affidavit of Connie Florez. (R. 0323)

In advance of trial, Schindler filed a Motion in Limine to exclude the testimony of plaintiff's medical expert, Dr. Brian Morgan. As a sports medicine physiatrist, Dr. Morgan lacked the knowledge, skill, experience, training and education to be qualified to offer expert medical testimony regarding the diagnosis or causation of BPPV. (R. 0352-369) In addition, no opinion as to causation was set forth in Dr. Morgan's expert report, precluding testimony as to any such opinion at trial. (R. 690) The trial court denied Schindler's Motion in Limine. (R. 907). Also before trial, Schindler objected to plaintiff's proposed trial exhibits which included plaintiff's summary of medical expenses on the grounds that the documents underlying that summary had never been identified or produced to Schindler. (R. 0482-488)

At trial, Schindler only stipulated that its negligence caused the malfunction of the elevator on the DOI, leaving the issues of whether the malfunction of the elevator in fact caused plaintiff's injury and if so, what her monetary damages were, to be determined by the jury. (R. 908 p. 15) During the pretrial conference, the trial court ruled that plaintiff's treating physicians would be permitted to testify, factually, as to their treatment of plaintiff and, over Schindler's objection, could be questioned as to whether her injuries were consistent with a fall. The court ruled, however, that the testimony of the treating physicians **could not come into evidence as expert medical opinion and could not be used to**

establish legal causation of plaintiff's claimed injuries or conditions Schindler again argued that the plaintiff's medical expert, Dr Morgan, should not be allowed to opine as to causation because no such opinion appeared in his expert report and because Dr Morgan is not qualified to opine regarding the diagnosis, treatment or cause of BPPV Dr Morgan, a sports medicine physiatrist, has no training in, or experience with, BPPV, did no research concerning BPPV in connection with this case, has never treated a patient for BPPV, does not know the standard test for diagnosing BPPV, admitted he cannot diagnose BPPV and does not know the treatment for BPPV Over Schindler's objection, the court nevertheless allowed Dr Morgan to opine as to the cause of plaintiff's BPPV condition In addition, the jury was not instructed that expert medical testimony is necessary to establish causation or that testimony of plaintiff's treating physicians was not sufficient to establish causation

Despite incontrovertible evidence that plaintiff's BPPV condition was present and treated on several occasions years before this incident, plaintiff denied the condition was preexisting and insisted it was first caused by the fall upon exiting the elevator (R Defendant's Exhibit Binder Tabs 118 and 30A) Even though plaintiff never claimed, and presented no evidence regarding aggravation of a pre-existing BPPV condition, the court improperly instructed the jury that plaintiff could recover for aggravation of a pre-existing condition.

At trial, plaintiff offered no quantitative evidence of special damages and accordingly no such evidence was admitted. Although plaintiff's treating physicians testified that plaintiff's future medical treatment would be consistent with the treatment she received in the last few years, plaintiff elicited no testimony to establish the nature or cost of that

treatment or to establish either past or future medical expenses. Plaintiff did not offer into evidence any invoices, receipts, insurance explanation of benefits or any other documentation whatsoever to establish the past or future cost of plaintiff's treatment. During closing argument, plaintiff's counsel created a summary of past and future medical expenses, despite the absence of any record evidence to provide foundation for that summary. Schindler objected to the summary and plaintiff's argument on the basis that no evidence had been admitted to provide foundation for the summary. The court overruled the objection.[2]

During the trial, a 1996 medical record, which had not been previously produced, was produced by a treating physician showing that plaintiff had been treated for and/or diagnosed with BPPV as early 1996. Schindler was unfairly surprised by this record because it had no prior knowledge of this record and no opportunity to include this record in its preparation for trial or in its pretrial motion for summary judgment. Schindler was denied the opportunity to have the trial judge decide its motion based on evidence crucial to its success and should have been provided that opportunity.

During opening and closing statements, plaintiff's counsel made repeated inappropriate comments and accusations which will be discussed fully, infra, and which improperly inspired passion and prejudice in the jury.

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[2] Plaintiff argued, contrary to the clear record, that a medical summary of plaintiff's medical expenses had been admitted into evidence and supported the summary and argument presented by counsel at closing. In fact, however, Schindler had objected to plaintiff's summary of medical expenses on the grounds it was not supported by admissible evidence and no documentation was ever provided or identified to support that summary. (R. 0482-488) Even if the summary was in evidence, however, it did not provide the necessary foundation for plaintiff's arguments at closing since the care and future medicals argued at closing were not consistent with or supported by the medical summary.

The jury awarded plaintiff $17,032.31 in past special damages, $93,350 in future special damages and **$220,764.62 in general damages** for a total damage award of $331,146.93. Over Schindler's objection, the trial court entered a judgment of jury verdict in that amount. Schindler moved for a directed verdict, judgment notwithstanding the verdict and for a new trial on the grounds discussed above. The court denied Schindler's post-trial motions. Schindler timely filed a Notice of Appeal and posted a supersedeas bond to stay the judgment pending the outcome of this appeal.

B. Statement of Facts Relevant to the Issues Presented for Review

1. On or about June 15, 2004 (DOI), plaintiff was in an elevator maintained by Schindler when it stopped, with the doors shut, due to a sensor malfunction. (R.909 p. 255)

2. After less than one hour, plaintiff exited the elevator with the assistance of third parties and fainted and fell to the floor. (R. 908 p. 75)

3. Plaintiff was taken to the emergency room and immediately released without any x-rays, symptoms or complaints. (R. Defendant's Exhibit Binder Tab 42) *See* Emergency Room Report, attached Addendum "A."

4. Plaintiff sued, asserting a negligence claim against Schindler and claiming damages for, injuries to her ribs and for causing (**not** aggravating) a condition known as BPPV, the primary symptom of which is dizziness. (R. 0001-3)

PLAINTIFF'S MEDICAL HISTORY

5. Plaintiff's medical records in evidence showed that plaintiff had a history of dizziness and of diagnostic tests and/or treatments for BPPV long before the DOI:

a. December 12, 1990: dizziness during treadmill exercise (R. Defendant's Exhibit Binder Tab 1)

b. January 18, 1991: dizziness during treadmill exercise (R. Defendant's Exhibit Binder Tab 2)

c. February 20, 1991: dizzy to the point of passing out before arriving in emergency room (R. Defendant's Exhibit Binder Tab 5)

d. January 19, 1995: fall during stress test complaining of lightheadedness (R. Defendant's Exhibit Binder Tab 9)

e. November 19, 1996: plaintiff described a "vertiginous-type sensation which sounds like a true vertiginous episode. ASSESSMENT: Connie has a form of vertigo . . . ." (R. Defendant's Exhibit Binder Tab 118) Plaintiff was tested using the dix-hallpike test, the standard test for BPPV, and was treated with canalith re-positioning ("CRT"), the standard treatment for BPPV. (R. Defendant's Exhibit Binder Tab 118) Addendum "B."

f. February 9, 1999: dizziness associated with chest pain (R. Defendant's Exhibit Binder Tab 11)

g. January 5, 2000: dizziness when moving quickly (R. Defendant's Exhibit Binder Tab 11)

h. April 11, 2001: recently having episodes of blacking out, dizziness and loss of vision (R. Defendant's Exhibit Binder Tab 26)

i. March 28, 2002: Vertigo is marked on record and plaintiff was given the Hallpike test which is the test to determine the existence of BPPV; plaintiff was treated with CRT and instructed to perform treatment at home for BPPV; reference to medical record from 1996 (e. above). (R. Defendant's Exhibit Binder Tab 30A) Addendum "C."

j. September 17, 2004: **After the fall,** plaintiff experienced dizziness and was tested for BPPV and treated with CRT, the exact same symptoms, testing and treatment as before the fall. (R. Defendant's exhibit binder tab 70) *See* Addendum "D."

k. May 19, 2006: **After the fall,** plaintiff experienced dizziness and is tested for BPPV and treated with CRT, the exact same symptoms, testing and

treatment as before the fall. (R. Defendant's exhibit binder tab 101) *See* Addendum "E."

CAUSATION

6. Before trial, the court ruled that any testimony from plaintiff's treating physician's could ***not*** be used to establish legal causation. (R. 909 p. 154)

7. Before and during trial, Schindler argued that Dr. Morgan could not testify as to causation because his expert report contained no opinion concerning causation and because Dr. Morgan lacked expertise to testify as to the diagnosis, causation or treatment of vertigo. (R. 0080-158, 0225-264, 907, 0352-409, 0443-450, 0451 and 910 p. 375-379)

8. The court ruled that Schindler had a standing objection as to Dr. Morgan's testimony. (R. 910 p. 380)

Dr. Morgan

9. Dr. Morgan, plaintiff's only expert witness, is a sports medicine physiatrist whose practice includes the "non-operative care of muscles, nerves and bones." (R. 910 p. 367)

10. An Independent Medical Examination ("IME") of plaintiff was performed by Dr. Morgan for plaintiff's counsel. (R. 0359, 0385-394).

11. Dr. Morgan's Curriculum Vita discloses no medical experience, practice or expertise in the fields of ears, nose and throat or otolaryngology. Dr. Morgan is board certified by the American Board of Medicine and Rehabilitation and the National Board of Medical Examiners. He performed his residency in physical medicine and rehabilitation, completed an internship in internal medicine and now practices in the area of sports

medicine, including electromyography, independent medical evaluations, industrial medicine, interventional injections, including epidural and selective nerve root blocks, pain management and sports medicine. (R. 0393-394) *See* Dr. Morgan's Expert Report, attached Addendum "F."

12. Dr. Morgan's IME report concluded that plaintiff is suffering from vertigo and gave her an impairment rating but contains no opinion as to the cause of her vertigo. (R. 0385-394)

13. When questioned in his deposition, Dr. Morgan was unable to explain his diagnosis of "benign positional vertigo" and testified, with regard to that diagnosis, that he relied on the medical records reflecting the diagnosis of Dr. John Siddoway:

> Q. ... Why did you use the word "benign" if there is no difference between benign positional vertigo and positional vertigo? It's your report. You used the word. I'd like to know why you used the word.
>
> A. If I can reference to number 33 in "Review of Records," Dr. John Siddoway gave an impression: "Symptoms quite typical of benign positional vertigo."
>
> I feel that she had benign positional vertigo. I concur with his diagnosis. If there seems to be a problem with that, I would refer you to Dr. Siddoway.

(R. 0396-400).

14. Dr. Morgan testified in his deposition:

With regard to the cause of plaintiff's benign positional vertigo:

> A. I felt that without any prior history of dizziness in reviewing the records, that it was – that it was – that was causation related to the elevator accident.

Q. So just to clarify, because you didn't see any existing – any prior history of dizziness, you concluded, based on this accident, that the accident must have caused the vertigo; is that correct?

A. That was my causation, correct.

(R. 396-400)

15. Dr. Morgan testified at trial that plaintiff fainted as a result of being stuck in the elevator. Schindler objected on the basis that Dr. Morgan's report contained no opinions or conclusions regarding the cause of plaintiff's fainting. The court overruled the objection. (R. 910 p.380)

16. Dr. Morgan testified that plaintiff's fall caused the injuries to her rib and inner ear. (R. 910 p. 381-82)

17. Over Schindler's objection, Dr. Morgan testified that plaintiff's neck pain was aggravated by the fall. (R. 910 p. 385)

18. Dr. Morgan testified at trial that he relied on Dr. Siddoway's records in reaching his conclusions regarding plaintiff's vertigo. (R. 910 p. 402-03)

19. Dr. Morgan testified that he did not know the standard test for diagnosing BPPV. (R. 910 p. 402)

20. Dr. Morgan testified that he did not perform testing on plaintiff to diagnose BPPV. (R. 910 p. 403)

21. Dr. Morgan testified at trial that he had never before the trial in this action given an opinion with regard to the causation of vertigo. (R. 910 p. 408)

22. Dr. Morgan testified that any research he had done regarding vertigo was not related to the issue of vertigo addressed in the IME. (R. 910 p. 410)

Dr. Ammon

23. Dr. Ammon, one of plaintiff's treating physicians, testified that he treated plaintiff for rib injuries and that her injuries were consistent with the fall. (R. 909 p. 168)

24. Dr. Ammon testified that plaintiff's neck and back pain could have flared up because of trauma from the fall. (R. 909 p. 182-83)

Dr. Siddoway

25. Dr. Siddoway testified that BPPV can be caused by trauma, among other causes. The trial judge however, gave no instruction to the jury consistent with his own pretrial order that the jury could not consider this testimony to prove causation. (R. 910 p. 425, 474-75; Such failure was clearly prejudicial to Schindler.

26. Dr. Siddoway testified that plaintiff suffered from BPPV and was treated by Dr. Siddoway and others for BPPV after the fall. (R. 910 p. 424-438, 443)

27. Dr. Siddoway testified that his treatment of plaintiff before the fall in March 2002 was for a different condition than what he treated her for after the fall. (R. 910 p. 425)

28. Although Dr. Siddoway testified the conditions in March 2002 and after the fall were different, he testified that the symptoms plaintiff had and treatment she received in March 2002 were identical to the symptoms she had and treatment she received after the fall. (R. 910 p. 465)

29. Dr. Siddoway testified that once a person has BPPV, the symptoms of dizziness associated with the condition and come and go. (R. 910 p. 446)

30. Dr. Siddoway testified that plaintiff was treated in 1996 by Dr. Peterson, an ear, nose and throat doctor, for ringing in both ears, hearing loss and dizziness. (R. 910 p. 459)

31. Dr. Siddoway testified that plaintiff was treated in March 2002 for ringing in her ears with canalith repositioning (canaliths are calcium carbonate crystals normally attached atop a membrane in of the inner ear) which is a treatment for BPPV and is meant to reposition the loose crystals in the inner ear. (R. 910 p. 422, 455, 461, 464, 480-81)

32. Dr. Siddoway testified that plaintiff was treated in May 2006 for ringing in her ears. (R. 910 p. 457)

33. Dr. Siddoway testified that he treated plaintiff for an inner ear infection in March 2002 but that he prescribed no antibiotics for that condition and that her symptoms in March 2002 of dizziness and ringing in her ears were consistent with her symptoms in the 1996 Petersen record diagnosing vertigo. (R. 910 p. 466)

34. The records from plaintiff's March 2002 visit to Dr. Siddoway nowhere indicate that she was diagnosed or treated for an ear infection or inflammatory disease. (R. 910 p. 480)

35. Dr. Siddoway testified that once canaliths in the inner ear come loose, they do not reattach and they stay loose. (R. 910 p. 467)

36. Dr. Siddoway testified that he suspected that plaintiff suffers from Meniere's disease, which has symptoms similar to BPPV, but is not caused by trauma. (R. 910 p.469)

37. Dr. Siddoway testified that plaintiff's recurrence of vertigo was caused by her discontinuing his prescribed exercises. (R. 910 p. 473)

Aggravation of Pre-Existing Injury

38. Over Schindler's objection, plaintiff's expert and treating physicians were allowed to testify that the fall aggravated or exacerbated plaintiff's pre-existing injuries. (R. 909 p. 182; 910 p. 385)

SPECIAL DAMAGES

39. In opening argument, plaintiff's counsel stated that her past medical bills were over $23,000 and her future medical bills would be approximately $50,000 to $75,000. (R. 908 at p. 18, 46)

40. In opening statements, plaintiff's counsel stated that plaintiff would need the same treatment in the future that she has received in the last few years. (R. 908 p. 45)

41. In closing argument, plaintiff's counsel referred to a summary of medical expenses created during closing showing that plaintiff has at least $23,040 in past medical expenses. (R. 911 p. 658)

42. In closing argument, plaintiff's counsel argued that future medical care would be consistent with the last two years of care. (R. 911 p. 659)

43. Schindler objected to plaintiff's counsel's summary and his reference to any figures or summaries of medical costs because there was nothing in evidence concerning plaintiff's medical costs to support the summary or argument. (R. 911 p. 660) Schindler's objection was a reaffirmation of Schindler's Objection to Plaintiff's Proposed Exhibits filed before trial, which objection was not ruled upon prior to the close of plaintiff's case. (R. 0482-83)

44 In response to Schindler's objection regarding counsel's summary of medical expenses and argument that plaintiff's future care would be consistent with the prior two years, the court stated to plaintiff's counsel, "I assume you are going to submit to them the medical bills for the past two years" (R 911 p 661) Schindler pointed out that there were no medical bills whatsoever admitted into evidence (R 611 p 662) The trial court nonetheless allowed plaintiff's counsel to refer to figures purportedly representing plaintiff's medical expenses (R 911 p 662)

45 In closing argument, plaintiff's counsel stated that plaintiff would need future medications, including Celebrex, Voltaren, Lidoderm (R 911 p 662)

46 In closing argument, plaintiff's counsel referred to a summary which showed that plaintiff's treatment in the past two years was $1,346 61 per year (R 911 p 662)

47. Over Schindler's objection, plaintiff's counsel speculated in closing argument that plaintiff would live twenty five years after the trial until she is 83 (R 911 p 579, 663)

48. In closing argument, plaintiff's counsel, referring to his summary of special damages, stated that plaintiff's total special damages were $126,090 (R 911 p 665)

49 During closing argument, Schindler pointed out that plaintiff's counsel's summary of future medications included various medications that can be found no where in the plaintiff's medical records, which records were not in evidence The only medication on plaintiffs' summary that was in plaintiff's medical records and testified to by plaintiff's treating physician was Lidoderm patches (R 911 p672 and 706, 672) The medications Celebrex and Voltaren which also appeared on plaintiff's counsel's summary, do not appear in

any medical record, including Plaintiff's Summary of Medical Expenses, to which Schindler objected. (R. 0686; Plaintiff's Exhibit 117)

50. Schindler objected to the summary of medical expenses going back into the jury room with the jury for deliberations on the basis that the records upon which the summary was based were never offered or received into evidence. (R. 911 p. 723-24, 727)

51. The court stated that it understood that the medical expenses had been stipulated to by the parties along with the admission of plaintiff's medical records. (R. 911 p. 725) Nowhere in the record is it reflected that Schindler stipulated to the admission of any document or information regarding medical expenses and Schindler specifically objected to Plaintiff's Summary of Medical Expenses, Plaintiff's Exhibit 117, both before and at trial. (R. 0482-83; 911 p. 660)

Dr. Ammon

52. Dr. Ammon testified that he had prescribed Lidoderm patches to plaintiff for pain management beginning January 30, 2008, long after the DOI, and that those patches had been prescribed for her before by another doctor. (R. 909 p. 216-218). Dr. Ammon did not testify as to the past or future cost of that medication.

53. Dr. Ammon testified that he prescribed Percocet for rib pain but did not testify as to the dosage, frequency or past or future cost of the medication. (R. 909 p. 170)

54. Dr. Ammon testified that plaintiff complained of dizziness and that he prescribed Entex to her for eustachian tube dysfunction. (R. 909 p. 178) Dr. Ammon did not testify as to the frequency or past or future cost of the medication.

55. Dr. Ammon testified that plaintiff had been prescribed Lortab for pain. (R. 909 p. 224). Dr. Ammon did not testify as to the past or future cost of the Lortab prescriptions.

56. Dr. Ammon testified that he initially treated plaintiff once or twice a week for a few weeks and subsequently treated her on and off, on a less frequent basis, for rib pain. (R. 909 p. 173-74, 180)

57. Dr. Ammon testified that he had reviewed the notes of plaintiff's treatment for rib, neck and back pain and that he believed that the treatment was reasonable and necessary. (R. 909 p. 183). Dr. Ammon did not testify as to the cost of the past or future treatment for plaintiff's rib, neck and back pain.

58. Dr. Ammon testified that he prescribed anti-inflammatories and muscle relaxers to plaintiff but did not specify the names, dosages, frequency or past or future cost of the medications. (R. 909 p. 185)

59. Dr. Ammon testified that he prescribed Voltaren gel to plaintiff but did not specify the dosage, frequency or the past or future cost of such medication. (R. 909 p. 185)

60. Dr. Ammon testified that plaintiff's future care would be similar to the care she received in the past few years but he did not testify about the past or future cost of any past or future medical treatment. (R. 909 p. 186)

61. Dr. Ammon testified that plaintiff would need future medications but he did not testify as to what those medications would be or their past or future cost. (R. 909 p. 186)

62. Dr. Ammon testified that he had reviewed the charges for treatment of plaintiff's neck, rib and back pain and that he believed the charges were reasonable and customary. (R. 909 p. 188). The charges that Dr. Ammon reviewed, however, were not disclosed, identified, offered or admitted into evidence and Dr. Ammon did not testify regarding any amount charged by any health care professional to treat plaintiff's neck, back and rib pain.

Plaintiff

63. Plaintiff testified that she would continue to see Dr. Ammon, at least every three to six months in the future, but did not testify as to the past or future cost of such treatment. (R. 909 p. 291, 351)

64. Plaintiff testified that she would have to live on pills for the rest of her life but did not testify as to the type, frequency or past or future cost of such drugs. (R. 909 p. 350)

65. Plaintiff testified that she uses pain patches every day but did not testify as to the specific type or past or future cost of the pain patches. (R. 909 p. 292)

66. Plaintiff testified that Dr. Siddoway prescribed Valium to her. (R. 909 p. 280) Plaintiff did not testify as to the amount, frequency or past or future cost of the medication.

67. Plaintiff testified that she was given injections for pain in her neck and low back. (R. 909 p.288). Plaintiff did not testify as to the number, frequency or past or future cost of the injections.

68. Plaintiff testified that she had been purchasing and taking vitamins given to her by Dr. Siddoway for her ear and dizziness problems but she did not testify as to the past or future cost of those vitamins. (R. 909 p. 293)

Dr. Morgan

69. Dr. Morgan testified that he had reviewed the charges for plaintiff's treatment and that they were reasonable in the community. (R. 910 p. 384). The charges that Dr. Morgan reviewed, however, were not disclosed, identified, offered or admitted into evidence. Dr. Morgan did not testify regarding any amount charged by any health care professional to treat plaintiff.

Dr. Siddoway

70. Dr. Siddoway testified that he prescribed Valium to plaintiff but did not specify the amount, duration or past or future cost of such prescription. (R. 910 p.425-26, 473)

71. Dr. Siddoway testified that the treatment that plaintiff received for BPPV was reasonable and necessary but did not specifically testify about past or future treatment, including frequency or cost. (R. 910 p. 446-47)

72. Dr. Siddoway testified that he had no knowledge about the cost of treatment that plaintiff received from other physicians. Dr. Siddoway testified that he knows his own charges, had reviewed charges from other physicians that had treated plaintiff and that the charges from other physicians were similar to his and reasonable. (R. 910 p. 446-48) Dr. Siddoway did not testify as to the amount he charges or the amount other physicians charged.

73. Dr. Siddoway testified that plaintiff's BPPV would likely be an ongoing problem and that he hoped that treatment in the future would be similar to future treatment

needed by plaintiff for BPPV. (R. 910 p. 449) Dr. Siddoway did not state with any specificity the frequency of future visits needed by plaintiff or the cost of any past or future treatment.

Future Damages

74. In connection with Schindler's Motion for Direct Verdict as to future medical expenses, the trial court initially ruled that because plaintiff had not submitted evidence as to her life expectancy, she would not be allowed to request future damages. (R. 911 p. 584-85)

75. Thereafter, the trial court modified its ruling allowing plaintiff to argue future damages to the jury but refusing to instruct the jury with regard to life expectancy. (R. 911 p. 591-94) Schindler objected. (R. 911 p. 594)

76. In closing argument, plaintiff's counsel was allowed to argue, over Schindler's objection, that plaintiff would live an additional twenty-five years until age 83. (R. 911 p. 663)

SURPRISE EVIDENCE

77. During the cross examination of Dr. Siddoway, Dr. Siddoway testified that he had reviewed a 1996 medical record from Dr. Peterson and produced a copy of the record. (R. 910 p. 459; Defendant's Exhibit Binder Tab 118) The 1996 Peterson record had not been previously provided to Schindler and Schindler was unaware of its existence until the cross examination of Dr. Siddoway mid-way through the trial, obviously precluding Schindler from using that record in connection with its motion for summary judgment. The Peterson record showed that plaintiff had the same symptoms and been given the same tests for BPPV with the same results that she received after the fall. (R. 910 p. 459-461; Defendant's Exhibit Binder Tab 118)

OPENING AND CLOSING ARGUMENTS

Opening

78. Plaintiff's counsel's opening and closing argument did not focus on or summarize the evidence presented at trial. Rather, the arguments improperly appealed to the passion and prejudice of the jury and attacked the credibility of Schindler's counsel as follows:

> Connie [h]as worked full time for the IRS for 28 years. During that time she raised a large family and has been very active in the community, very active in her church. Connie has for many years been what's called a Communion Minister. That means she's the one who administers communion in the Catholic Church by assisting the priest and she's done that for many years. Connie is very committed person. (R. 908 at p. 12)
>
> You will learn that back in 1990 Connie['s] husband who was a laborer for the railroad suffered some serious injuries to his back, had some herniated discs, had to have surgery and just wasn't able to work for a long time and during that time Connie showed her true personality by going to work at 5:30 in the morning at the IRS, working until 3:00 in the afternoon, then getting in her car and driving over to K-Mart and working until 11:00 at night for over five years. 5:30 in the morning until 11:00 at night for over five years. So this is a lady who knows how to work and works hard and has never shirked from doing her duty for her family or her community. (R. 908 at p. 13)
>
> Schindler Corporation . . . is a worldwide conglomerate and they're the defendant here. As I saw some of their paperwork , it looks like the[y] employ about 44,000 people and they're owned by a Swiss company called Schindler Holding Limited. (R. 908 at p. 14)

Over the objection of Schindler and contrary to the court's ruling that it should not be discussed before the jury, plaintiff's counsel discussed the parties' stipulation to negligence stating:

> Schindler has admitted negligence. In other words they've said, Okay, we were at fault, the elevator should have been working and they weren't. Okay? Now, what they're not acknowledging – and by the way, since they admitted

negligence you don't have to worry about deciding were they were negligent or weren't they negligent. They admit they were negligent. They don't allege Connie did anything wrong but it's their elevator, they hadn't maintained it and it simply stopped and it had been malfunctioning for a long time. (R. 908 at pp. 14-15). [Counsel for Schindler objected again and the objection was again sustained.]

[Plaintiff's husband] was off work for many years and Connie worked from 5:30 in the morning until 11:00 at night. (R. 908 at p. 38)

Connie . . . is not the kind of person whose [sic] going to come in and say compensate me for something that's not a problem. (R. 908 p. 39)

You'll hear that she's a tremendous worker and always has been . . . (R. 908 at p. 43)

Connie . . . [is] not looking for a free lunch. (R. 908 p. 46)

One doctor is what we call an IME, Independent Medical Evaluation. They're all local doctors. They have no reason, no motivation to not be truthful in their opinions and I hope you'll listen carefully to what they say. (R. 908 p. 47)

I did depose their doctor and here's what he said. Well, let me tell you who he is. His name is Dr. [Knoebel]. He lives in the Sun Valley area and I've seen him many times because all I do is help people who are injured. . . . When I took his deposition . . . [h]e testified that 98 percent of what he does in medicine is this. He lives in the Sun Valley area, he really does nothing but evaluate people. . . . He testified that 98 percent of what he does i[s] this, what we call a courtroom doctor. . . . All of it is done for defendants. That's all he does. And guess what he said about Connie? She's not hurt. That's his testimony, Connie wasn't hurt. In fact, he not only said she's exaggerating everything. No. Kind of a code word for she's liar. (R. 908 at p. 49)

In his deposition he told me he makes close to $1 million doing this, being a courtroom doctor. (R. 908 p. 50)

Closing

[Schindler's counsel] had the record of what happened. He knew that Connie had gone up to Ogden Clinic and that she tried to go to the doctor and they said there's a billing mistake . . . He knew that and yet he left the impression that Connie had lied to her boss. Why did he do that? Because that's what

they have done all through this trial, try to leave impressions about Connie, kind of quick strokes in and out so you'll get left with some kind of impression, gee, she must have done something wrong. (R. 911 p. 637)

But if you decide Connie was being truthful then Schindler ought to be ashamed or themselves that kind of tactic, particularly in a situation where you have a woman like Connie where the evidence is that she's lived by the rules her whole life. You've heard testimony, Connie has worked hard her whole life. You heard her co-workers, what they thought of Connie. You've heard the testimony that [she was] an exemplary worker. She wasn't somebody who ever tried to take advantage of anything, she never misrepresented anything to anybody. (R. 911 p. 638)

Why did they do that? Why did he leave off that critical explanation of light-headedness and the dizziness? Because their thinking was if they bring in 20 or 30 charts with all kinds of stuff on them, you'll get so confused, see it starts to make sense, well, see she had it in 1990, she had it in 1995; 2001, it's just he same thing. It's a dishonest tactic and should not be accepted. (R. 911 p. 639)

They could have done any kind of investigation but not one witness was brought in by them about Connie's character, honesty, truthfulness or anything such as that at all. They just brought in a courtroom doctor, one witness, that was it. (R. 911 p. 641)

So what you have is them hiring a doctor and having him carry the water, so to speak, for Schindler's position that Connie exaggerates. Well, we don't call it exaggerates, she amplifies. I guess you could say that. They don't want to come out and say, well, we think Connie is lying because that would be too harsh. So they want to use fancy words, but that' what it is. That's what they're saying. (R. 911 p. 641)

Remember, you can buy testimony and Schindler bought a courtroom doctor to attack Connie's credibility, simple as that. (R. 911 p. 642)

But what you can't buy is the kind of life Connie has led, the evidence of that, you can't buy that. Connie has been devoutly religious, extremely hardworking mother of five children. Any evidence to the contrary, folks? No. That is the evidence. She always followed the rules. You report to work. Here's a lady who couldn't even stand up, she calls in the next day to say I'm sorry, I won't be in, I have to go to the doctor and they want to make her lying about that. Here's a lady – what's the first call she made in the elevator? She calls Debbie Pollard and what does Debbie say[] the first thing she says to her I'm sorry Debbie, I'm going to be late coming back from lunch, I'm stuck

in the elevator. I'm going to be late coming back from lunch. She calls to apologize to her supervisor because she's stuck in the elevator. Does that sound like a dishonest person? I don't think so. (R. 911 p. 642)

The one thing you can't buy is character and Connie has that and shouldn't that count for something? If you live 58 years with a good, solid, character, if it weren't so sad it would be laughable that they're doing this. They want you to believe their purchased doctor versus doctors in this community at all, co-workers who have no axe to grind and Connie who is as good a person and I've ever worked for. Thank the Lord we have this system of justice and I mean that sincerely because if Schindler can get out of paying for the injuries they've done to Connie, they can hurt anybody and walk away and if they will do it to Connie, they will do it to anybody because if there's anybody who doesn't deserve the treatment she's got, it's Connie. (R. 911 p. 643)

How're they doing it? They're misrepresenting facts . . . . No matter how much money you spend on big time attorneys and courtroom doctors, you need to pay for the damage you've caused. (R. 911 p. 643)

Your verdict can tell them that character assassination will not let them escape their responsibility. Do we want a world where a person of a company can hurt someone and then walk away because they're bigger, they're stronger, what they can get away with? . . . They made up their mind the minute the found out Connie fell. They didn't do a reasonable investigation to find out what had occurred. It was Schindler against Connie from the moment she fell . . . . (R. 911 p. 643-44)

They didn't talk to anyone in Connie's life to find out what Connie was like, is she the kind of person they're saying she is? Instead they immediately put their money and their time into making Connie's life even more difficult, for four years of fighting with these folks. (R. 911 p. 644)

Schindler wouldn't give her the time of day. They wouldn't accept responsibility for anything. (R. 911 p. 645)

The people in Connie's life, her co-workers, they all testified about Connie's good character . . . (R. 911 p. 645)

[Schindler] is one of the biggest elevator companies in the world . . . . (R. 911 p. 645)

[Connie] has been as truthful as she can be. (R. 911 p. 646)

> [N]o evidence to the contrary other than the courtroom doctor for Schindler . . . . (R. 911 p. 648)
>
> He wants to blame Dr. Siddoway because he didn't catch a typo. Reprehensible. (R. 911 p. 652)
>
> [Schindler] is trying to leave an impression rather than give you the truth. (R. 911 p. 654)
>
> Trust me, Connie isn't wealthy . . . . (R. 911 p. 656)
>
> Gee, if she was one of those kind looking for a free lunch and exaggerating and lying about thing, why wouldn't she be here saying where's my money for my lost wages, my future wages, all those kinds of things if was that kind of person. She isn't that kind of person. That's why that's not there. (R. 911 p. 666)
>
> That's the game he's been playing all along, folks, and as I said earlier, reprehensible. 9R. 911 p. 714)
>
> He says, Well, I've never used Dr. K[noebel] before. He neglects to mention he's with one of the biggest firms in Salt Lake. (R. 911 p. 713)
>
> He's trying to convince you that Connie was going to her doctors, feeding them a line. Connie was lying to them. I'm sorry for getting upset but I can only take so much of this. I know Connie, he doesn't. (R. 911 p. 716)
>
> Your job is to do justice. That lady deserves it. (R. 911 p. 721)

79. At the end of closing argument, Schindler's counsel stated that he found the rebuttal closing argument incredibly offensive and so egregious that it would probably support a mistrial. (R. 911 p. 731)

80. The trial court expressed concern at plaintiff's counsel's closing argument, stating that "I was a little bit concerned when you personally vouched for your client which is fine, but you're editorializing and vouching for her veracity and lawyers are not typically allowed to do that." (R. 911 p. 732)

ARGUMENT

I. CAUSATION

A. The Trial Court Erred in Denying Schindler's Motion for Summary Judgment Prior to Trial on the Issue of Causation

Before trial, Schindler moved for summary judgment on the basis that plaintiff had failed to establish causation of her alleged injuries. Specifically, Schindler argued that plaintiff was required to present expert medical opinion regarding causation of her claimed injuries and that her only expert, Dr Morgan, had failed to opine on causation in his expert report.

A claim for negligence can be maintained only where a plaintiff can show "(1) a duty of reasonable care owed by the defendant to [the] plaintiff; (2) a breach of that duty; (3) causation, both actually and proximately, of [the] injury; and (4) the suffering of damages by the plaintiff." *Weber v. Springville City,* 725 P.2d 1360, 1363 (Utah 1986). The failure to present evidence that, "if believed by the trier of fact, would establish any one of the [elements] of the prima facie case justifies a grant of summary judgment to the defendant." *Kent v. Pioneer Valley Hospital,* 930 P.2d 904, 906 (Utah Ct. App. 1997). "An essential element in a negligence action is that the plaintiff establish the necessary connection between the defendant's negligence and the plaintiff's injury." *Weber,* 725 P.2d at 1367.

In other words, causation must be established by evidence which shows that plaintiff's injury would not have occurred but for the actions of the defendant. *See id.* The showing of a mere possibility of causation is not sufficient and when the issue of causation "remains one of pure speculation or conjecture, or the probabilities are at best evenly

balanced," a claim for negligence must be dismissed. *See id.* (affirming grant of summary judgment for defendant where plaintiff failed to establish that defendant's negligence caused plaintiff's injuries); *Johnson v. Watts,* 2005 UT App 122 ¶3; *Webster v. Sill,* 675 P.2d 1170, 1173 (Utah Ct. App. 1983). In cases where the alleged injuries are outside the common knowledge and experience of a lay person, causation must be established by expert testimony. *See Triesault v. Imagination Theaters, Inc.,* 2005 UT App 489 ¶ 16 (emphasis added).

Utah courts define proximate cause as "that cause which, in the natural and continuous sequence . . . produced the injury and without which the result would not have occurred. It is the efficient cause—the one that necessarily set in operation the factors that accomplished the injury." *Thurston v. Workers Compensation Fund of Utah,* 2003 UT App 438 ¶14. If a plaintiff fails to establish a direct causal link between the alleged negligence and the injury, summary judgment is appropriate on the issue of causation. *See id.* at ¶16. Merely demonstrating an issue of fact regarding the defendant's negligence will not preclude summary judgment without a showing of causation. *See id.*; *see also Clark v. Farmers Ins. Exchange,* 893 P.2d 598, 601 (Utah Ct. App. 1995) (summary judgment affirmed "based on the complete absence of evidence on causation" and where the mechanism of plaintiff's injury could not be determined "without speculating or guessing").

It is well-settled in Utah that a plaintiff is required to establish injury and damages through expert medical testimony and present positive expert testimony to establish a causal link between the defendant's alleged negligent act and the plaintiff's injuries. *Beard v. K-Mart Corp.,* 200 UT App 285, ¶¶ 12, 16. Testimony of lay witnesses regarding medical conditions

and/or the need for specific medical treatment is not sufficient to prevail on a negligence claim. *See id.*

The only evidence of a causal link between the fall suffered by plaintiff and defendant's alleged negligent acts in this case and plaintiff's injuries and damages comes from plaintiff's own affidavit which is not sufficient to establish legal causation. Dr. Morgan's expert report failed to address in any way the issue of whether plaintiff's claimed injuries were caused by the fall and offered no opinion in that regard. The trial court therefore erred in denying plaintiff's motion for summary judgment on the issue of causation. The trial court's denial of Schindler's motion for summary judgment should be reversed and summary judgment entered in favor of Schindler on the basis that plaintiff failed to establish the element of causation for purposes of her negligence claim.[3]

B. The Trial Court Erred in Denying Schindler's Motion to Strike Plaintiff's Testimony in Her Affidavit Regarding Causation

In opposing Schindler's motion for summary judgment on the issue of causation, plaintiff submitted her affidavit in which she offered her opinion as to the causation of her injuries. Plaintiff's affidavit includes the following statements: (3) "during my time in the elevator, I suffered an anxiety attach which caused significant emotional and physical distress; (4) As a result of the stress and anxiety experienced in the elevator care, I fainted when the door [sic[pried open and I was assisted from the elevator car. . . ."; (5) "As a result of the fall to the floor, I dislodged three ribs and aggravated and experienced a

[3] Because plaintiff's expert could testify only to those issues set forth in his expert report, plaintiff's expert should also have been precluded from testifying as to causation at trial as explained below in detail in Section I.C.

significant amount of pain in my back, shoulder, and neck. Furthermore, I suffered significant vertigo and dizziness after the fall, which has continued to the present." (R. 0179-180) Because legal causation for purposes of a negligence claim in a personal injury case must be supported by expert medical opinion, and no foundation was provided to qualify plaintiff to give such an opinion, her opinion purporting to establish legal causation should have been stricken. *See Triesault v. Imagination Theaters, Inc.,* 2005 UT App 489 ¶ 16.

Rule 56(e) requires that an affidavit submitted in support of or in opposition to a motion for summary judgment must set forth facts that would be admissible in evidence. *See* Utah R. Civ. P. 56(e). *See Hammad v. Bombardier Learjet, Inc.*, 192 F. Supp. 2d 1222, 1228 (D. Kan. 2002). Although such evidence need not be presented in a form that would be admissible at trial, the content or substance of the evidence in an affidavit must be admissible. *See id.* An affidavit submitted in support of a motion for summary judgment must, "if reduced to admissible evidence, [be] sufficient to carry the [party's] burden of proof at trial." *Thomas v. International Business Machines,* 48 F.3d 478, 484 (10th Cir. 1995); *McCollin v. Synthes, Inc.,* 50 F.Supp. 2d 1119 (D. Utah 1999); *Winter v. Northwest Pipeline Corp.*, 820 P.2d 916, 919 (Utah 1991) ("Rule 56(e) also requires that an affidavit in opposition to a motion for summary judgment set forth facts that would be admissible in evidence."); *D & L Supply v. Saurini*, 775 P.2d 420, 421 (Utah 1989) ("It is true that inadmissible evidence cannot be considered in ruling on a motion for summary judgment.").

It is well-settled in Utah that a lay person cannot offer testimony regarding medical conditions, causation, diagnoses or treatment. *See Beard v. K.-Mart Corp.,* 200 UT App 285, *12, 16. Because plaintiff's affidavit contains inadmissible testimony regarding the cause of

plaintiff's injuries, it should be stricken. While plaintiff may testify as to her symptoms, the statements in her affidavit go far beyond the limits of permissible lay testimony regarding her alleged medical conditions. Plaintiff does not simply testify as to facts that "may be ascertained by the ordinary use of the senses of a lay person." *Beard,* 2000 UT App. 285 at ¶ 8. Rather, plaintiff attempts to provide medical diagnoses for her conditions and goes even further in testifying as to the cause of those conditions. Plaintiff states: "As a result of the distress and anxiety experienced in the elevator care, I fainted when the door [sic] were pried open and I was assisted from the elevator car." Florez Aff. at ¶ 4 (emphasis added). In addition to testifying as to the cause of her fainting, plaintiff testified concerning the cause of her dislodged ribs, pain, vertigo and dizziness: "As a result of the fall to the floor, I dislodged three ribs and aggravated and experienced a significant amount of pain in my back, shoulder, and neck. Furthermore, I suffered significant vertigo and dizziness after the fall, which has continued to the present." *Id.* at ¶ 5. Plaintiff may not, as she attempted to do in her affidavit, assume the role of a qualified expert in offering testimony regarding medical diagnoses and causation. The trial court therefore erred in denying Schindler's motion to strike plaintiff's affidavit and the ruling should accordingly be reversed and summary judgment entered in favor of Schindler.

C. The Trial Court Erred in Denying Schindler's Motions In Limine and for Directed Verdict on the Basis that Plaintiff Failed to Establish Causation

Dr. Morgan's testimony is the only evidence of causation plaintiff offered at trial. Prior to trial, Schindler filed its Motion in Limine with regard to the testimony of Dr. Morgan on the grounds that he had not opined as to causation in his report and on the

further ground that he was not competent to provide expert testimony in that regard. Following the close of plaintiff's case, Schindler made a motion for directed verdict based, in part, on the absence of evidence of causation in the record based on the incompetent testimony of Dr. Morgan and on the irrefutable evidence that plaintiff's BPPV condition was preexisting. Those motions were denied.

1. Dr. Morgan Should Not Have Been Permitted to Testify Regarding Causation Because His Report Contained No Such Opinion

Utah Rule 26(a)(3)(B) provides that an expert report must contain the "subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify [and] a summary of the grounds for each opinion." *Id.* The Advisory Committee Notes to the rule states that the "expert should not be permitted to testify at variance with the report." The purpose of an expert report is to "give the opposing party adequate notice to prepare to meet the testimony." *State v. Arellano*, 964 P.2d 1167 , 1166 (Utah Ct. App. 1998). Experts may not testify regarding issues not included in their report because the opposing party has not been given notice and opportunity to meet those issues at trial. *Edizone, L.C. v. Cloud Nine*, 76 Fed. R. Evid. Serv. (Callaghan) 779 *10-12 (N.D. Utah 2008).

Dr. Morgan's report contained no opinion regarding the cause of plaintiff's injuries. Therefore, Dr. Morgan should not have been permitted to testify regarding the cause of plaintiff's injuries, including her BPPV. The trial court's ruling in that regard should

accordingly be reversed and a directed verdict entered in favor of Schindler on the basis that plaintiff offered no admissible expert testimony to establish causation.

2. Dr. Morgan Should Not Have Been Permitted to Testify Regarding Causation Because He is Not Competent to Testify Regarding BPPV

Even if the trial court properly allowed Dr. Morgan to testify as to causation based on his report, his testimony should have nonetheless been excluded because he is not qualified or competent to testify regarding the diagnosis, cause or treatment of BPPV. A witness may not offer an expert opinion in an area in which the witness is not trained, has no knowledge, expertise, education or training. *See* Utah R. Evid. 702. With respect to expert medical testimony, Utah courts recognize that "ordinarily, a practitioner of one school of medicine is not competent to testify as an expert . . . of another school." *Burton v. Youngblood,* 711 P.2d 245, 248 (Utah 1985) (Expert witness may only offer expert testimony based upon his knowledge, skill, experience, training or education.) This rule has been judicially adopted in a majority of states, including Utah, because it "makes good sense . . . in light of the wide variation between schools in both precepts and practices." *Id.*

In *Jensen v. IHC Hospitals,* plaintiffs sought to introduce expert medical testimony regarding the standard of care for emergency room physicians in a medical malpractice case. *See id.* at ¶¶ 46-48. Defendants moved to exclude the expert testimony on the basis that the expert was not qualified to offer an opinion because he was an obstetrician that: (1) had no training in emergency medicine; (2) was not certified in emergency medicine; (3) had not reviewed any literature regarding the type of injury at issue in the case; (3) and had only briefly worked in an emergency room. *See id.* at ¶ 47. The trial court excluded the expert

testimony regarding emergency room procedures. *See id.* at ¶ 98. At trial, the court also entered a partial directed verdict because plaintiff, lacking the necessary expert medical testimony, was unable to prove the standard of care with respect to emergency room procedures. On appeal, the Utah Supreme Court affirmed the trial court's ruling. *See id.* at ¶ 93.

Similarly, in *Evans v. Langston*, 2007 UT App 240, plaintiff designated an anesthesiologist to testify regarding the standard of care and causation of the plaintiff's cardiac arrest resulting from atherosclerosis. *See id.* at ¶ 5. Defendant filed a motion in limine to exclude the testimony on the basis that the expert was not qualified because cardiac arrest was "outside of the field of knowledge of an anesthesiologist." *Id.* Relying on the "general rule a practitioner of one school of medicine is not competent to testify as an expert [in] another school [of medicine]," the trial court excluded the expert from testifying about anything outside the area of anesthesiology because plaintiff failed to show that the expert "was qualified to testify about cardiology or coronary artery atherosclerosis. *Id.* at ¶¶ 10-12.

Courts considering whether an expert may offer testimony or opinions outside that person's area of expertise have almost universally held that they cannot. *Benison v. Silverman*, 233 Ill. App. 3d 689, 698 (Ill. Ct. App. 5th Dist. 1992); *Perez v. City of Austin*, 2008 U.S. Dist. LEXIS 36776 (W. Dist. Texas May 5, 2008)("An expert must . . . stay within the reasonable confines of his subject area and cannot render expert opinions on an entirely different field or discipline."); *Davison v. Indus. Claim Appeals Office*, 84 P.3d 1023, 1026 ("We hold that . . .a medical or psychological expert witness must testify as to those matters within his or her expertise") (emphasis in original); *Wintz v. Northrop Corp.*, 110 F.3d 508, 513 (7th Cir. 1997)

(affirming exclusion of opinion by toxicologist who was not a licensed physician or surgeon as to whether plaintiffs conditions were caused by exposure to bromide); *Cromer v. Mulkey Enters.*, 254 Ga. App. 388, 393 (Ga. Ct. App. 2002) (Expert may not give opinions "outside the domain of the science, art, or trade in which they are experts"); *Sinkfield v. Oh*, 229 Ga. App. 883, 886 ("of course, it is axiomatic that no expert can testify outside the limits of his area of expertise").

In this case, Dr. Morgan's Curriculum Vita and testimony at trial demonstrate that he does not possess the skills, training, education or experience to opine regarding BPPV. Dr. Morgan is certified by the American Board of Medicine and Rehabilitation and the National Board of Medical Examiners. He performed his residency in physical medicine and rehabilitation, completed an internship in internal medicine and now practices in the area of sports medicine, including electromyography, independent medical evaluations, industrial medicine, interventional injections, including epidural and selective nerve root blocks, pain management and sports medicine

Dr. Morgan could not explain his diagnosis of benign positional vertigo in his deposition and testified that the diagnosis was based on his review of various medical records and adoption of Dr. John Siddoway's diagnosis reflected in those records. Dr. Morgan reviewed no literature or other source of information related to vertigo or any other relevant field of medicine. Although not in his expert report, Dr. Morgan testified in deposition that he determined that plaintiff's benign positional vertigo resulted from her being stuck in the elevator. The basis for that opinion is his review of the medical records

provided to him and his conclusion that before June 15, 2004, no symptoms of vertigo appear in the medical records:

A. I felt that without any prior history of dizziness in reviewing the records, that it was – that it was – that was causation related to the elevator accident.

Q. So just to clarify, because you didn't see any existing – any prior history of dizziness, you concluded, based on this accident, that the accident must have caused the vertigo; is that correct?

A. That was my causation, correct.

Deposition of Brian Morgan, p. 13 l. 21 – p.14 l. 4, attached exhibit "D."[4]

At trial, Dr. Morgan testified that he had never before opined regarding the causation of BPPV, did not know the causes of BPPV and did not know the standard test to diagnose BPPV.

Dr. Morgan's conclusion that plaintiff's BPPV was caused by the fall involves no expertise whatsoever. He has merely reviewed documents, as any lay person could, and reached a logical conclusion based on his observations from those documents. There is no medical basis for his opinion and he therefore should not have been permitted to testify as an expert concerning the cause of plaintiff's condition. Without Dr. Morgan's testimony regarding causation, which was the only expert medical testimony offered at trial regarding causation, plaintiff failed to prove the element of causation and a directed verdict in favor of Schindler should have been granted. The trial court's denial of Schindler's motion for a directed verdict should accordingly be reversed and a directed verdict dismissing plaintiff's negligence claim directed in favor of Schindler.

---

[4] Dr. Morgan admitted on cross-examination that if the evidence showed that plaintiff suffered from the same dizziness and lightheadedness both before and after the fall, the fall is not the cause of those symptoms after the fall. (R. 910 p. 405)

3. The Evidence Presented at Trial Regarding Plaintiff's Vertigo Was Insufficient to Support the Verdict

At the close of plaintiff's case in chief, Schindler moved for a directed verdict on the basis that the evidence showed that plaintiff had suffered from BPPV before the fall and that it is a condition that does not go away once a person suffers from it. (R. 911 p. 563)

A directed verdict based on insufficiency of the evidence should be granted where "*the evidence to support the verdict was completely lacking or was so slight and unconvincing as to make the verdict plainly unreasonable and unjust.*" *Child v. Gonda,* 972 P.2d 425, 433 (Utah 1998) (emphasis in original).

In this case, testimony at trial from plaintiff's treating physician, Dr. Siddoway, established that once a person has vertigo caused by the breaking off and moving around of loose crystals in the inner ear, that condition, although it can be controlled with treatment, is never cured and can come and go throughout a person's life. Dr. Siddoway testified that plaintiff was treated in 1996 and in March 2002 for the identical symptoms of dizziness and ringing in the ears that she was treated for after the fall. Although Dr. Siddoway testified he treated plaintiff not for BPPV but for an ear infection in 2002, the medical records show no diagnoses or treatment of an ear infection or inflammatory condition. Rather, in 2002, plaintiff's medical records unequivocally demonstrate that plaintiff was treated for BPPV with CRT (canalith repositioning treatment), the treatment for BPPV and the exact treatment she received both in 1996 and after the fall to treat identical symptoms indicating BPPV.

Other than Dr. Siddoway's unsupported and incredible statement that plaintiff was treated for an ear infection in 2002, all of the testimony and medical record evidence presented at trial shows that plaintiff suffered from BPPV or Meniere's disease as early as 1996. Plaintiff had the exact same symptoms, diagnosis and treatment in 1996, 2002 and after the fall. Therefore, the fall could not have caused the BPPV. Thus, to the extent the jury's verdict was based on the conclusion that the fall caused the BPPV, there is no evidence to support such a conclusion and a directed verdict should have been entered in favor of Schindler.

D. The Court Erred in Allowing Expert Testimony By Treating Physicians and, Upon Allowing Such Testimony, in Failing to Instruct the Jury that Testimony From Plaintiff's Treating Physicians Was Insufficient to Establish Legal Causation

It is well established that treating physicians may not testify as to legal causation unless they are properly designated as experts and provide expert reports pursuant to the requirements of Rule 26. *See Blodgett v. U.S.A.,* 2008 U.S. Dist. LEXIS 35804 Case No. 2:06-CV-00565DAK (D. Utah 2008). Where a deadline exists for the disclosure of experts, "the rules impose stiff penalties for noncompliance—namely, failure to adhere with rule 26(a) disclosure requirements will prevent a party from using such evidence at trial . . . ." *Id.* at *11. With respect to treating physicians, "a treating physician who testified beyond his or her personal observations and diagnosis of the patient and opines as to the causation of injuries must be identified in expert disclosures." *Id.* at *12; *Pete v. Youngblood,* 2006 UT App 303 ¶ 15.

1. Plaintiff's Treating Physicians Improperly Testified As Expert Witnesses Over Schindler's Objection

The trial court initially ruled that the testimony of plaintiff's treating physicians would be limited to facts related to their treatment of plaintiff. At trial, however, the court, over Schindler's objection, improperly allowed the treating physicians to go outside their personal knowledge of plaintiff's treatment and to testify regarding causation of plaintiff's injuries.

Plaintiff's treating physicians were not designated as expert witnesses and did not submit reports pursuant to Rule 26(a)(3). As such their testimony should have been limited to their treatment of plaintiff. *See Blodgett v. U.S.A.,* 2008 U.S. Dist. LEXIS 35804 Case No. 2:06-CV-00565DAK (D. Utah 2008). Instead, they were allowed to testify as to whether plaintiff's injuries were consistent with the fall reported by plaintiff and concerning future treatment. The trial court erred in allowing plaintiff's treating physicians to offer expert testimony regarding causation. A directed verdict should accordingly be entered in favor of Schindler.

2. The Jury Should Have Been Instructed That The Testimony Of The Treating Physicians Could Not Be Considered To Establish Causation

To determine whether the jury was adequately instructed on the applicable law, we review the instructions in their entirety de novo to determine whether the jury was misled in any way. The instructions as a whole need not be flawless, but we must be satisfied that, upon hearing the instructions, the jury understood the issues to be resolved and its duty to resolve them. *Black v. M & W Gear Co.,* 269 F.3d 1220 , 1223 (10th Cir. 2001)(citing *Medlock v. Ortho Biotech, Inc.*, 164 F.3d 545, 552 (10th Cir. 1999)).

Although the trial court properly ruled that plaintiff's treating physicians could not testify as to legal causation, this ruling was not explained to the jury and the jury was not instructed regarding legal causation, i.e., that they could not rely on the treating physicians' testimony in considering causation. While plaintiff's expert, Dr. Morgan, testified as to the cause of plaintiff's vertigo, his testimony showed that he had no experience, knowledge or training in the area of vertigo. Therefore, the jury could only have relied on the testimony of plaintiffs' treating physicians regarding causation. Reliance on testimony from treating physicians that are not properly designated as experts, however, is not proper and the jury's conclusion that the fall caused the BPPV was therefore not supported by any competent expert testimony establishing causation. Because plaintiff presented no admissible expert testimony to establish causation, the court erred in denying Schindler's motion for a directed verdict. The trial court's ruling should accordingly be reversed and a directed verdict entered in favor of Schindler dismissing plaintiff's negligence claim.

II. THE COURT ERRED IN FAILING TO ENTER A DIRECTED VERDICT IN FAVOR OF SCHINDLER BECAUSE PLAINTIFF FAILED TO OFFER ANY QUANTITATIVE EVIDENCE OF SPECIAL DAMAGES

An award of damages must be based on evidence which allows a "reasonable estimate of the damage based on **relevant data** . . ." *Price-Orem Inv. Co. v. Rollins, Brown & Gunnell*, 784 P.2d 475, 478 (Utah Ct. App. 1989) (emphasis added). "[N]o award of damages should be based on mere speculation or conjecture. There must be a **firm foundation** for any award by proof that is at least more probable than not that the damage will be suffered. For this reason the jury should not be allowed to assess future damages on probability, but only

such damages as it believes from the preponderance of the evidence the plaintiff will *with reasonable certainty* incur in the future. *Robinson v. Hreinson*, 17 Utah 2d 261, 267 (Utah 1965) (emphasis in original).

In this case, the plaintiff did not present one shred of evidence upon which the jury could have based its award of special damages. No dollar figure representing any amount or cost was testified to by any witness and not one document was properly admitted into evidence showing any such expense, either past or future, that was or may be incurred by plaintiff. Although plaintiff's treating physicians testified generally that plaintiff's future medical treatment would be similar to her treatment in the preceding years, no evidence whatsoever was presented regarding the nature of that treatment or the cost of that treatment in the past or future.

Even plaintiff's purported Summary of Past Medical Expenses, erroneously recognized as admitted into evidence after the close of plaintiff's case,[5] does not reflect the damages argued by counsel in closing. Although the treating physicians said plaintiff's treatment would be more like the last few years than the first few, no treatment or cost of treatment was identified. Nevertheless, plaintiff's counsel argued an annual cost for ear treatment of $1,346.61, for a total future cost of $33,530 although those numbers are not disclosed or supported in the evidence. The basis for plaintiff's counsel's recitation of future

[5] Utah Rule of Evidence 1006 requires that all underlying documentation upon which a summary is based shall be identified and "made available for examination...." Plaintiff's counsel never made those documents available and never identified the documents to counsel or the Court despite Schindler's objection. (R. 0482-488) No witness testified regarding plaintiff's Summary of Medical Expenses, and no foundation was provided to support those costs.

costs associated with plaintiff's rib complaints, $214 annually for a 25 year cost of $5,350, is also not disclosed or supported in the evidence.

In addition, plaintiff listed various prescription costs in the summary, only one of which, Lidoderm, was even referenced by plaintiff's counsel in closing argument. The other two medications for which future expenses were sought, Celebrex and Voltaren, do not appear even in that summary or in any evidence of record. There is nothing in the record except counsel's unsupported arguments from which the jury could derive any cost for those two drugs, and yet it appears over $40,000 was awarded even in the absence of any evidence.

The only medical expense figures presented to the jury upon which the award of special damages could have been based were those written by plaintiff's counsel in closing argument. The derivation of those figures, however, is unknown although it is clear they were not derived from any evidence presented at trial as to either prescription costs or past or future medical costs as discussed in Statement of Fact paragraph 37 above.

Finally, in connection with Schindler's motion for directed verdict on future medical expenses, the court found that plaintiff had offered no evidence of life expectancy and ruled: "I'm not going to allow the future damages . . . ." (R. 911, pp. 584-85) The court thereafter modified that ruling and refused to instruct as to life expectancy but nevertheless allowed plaintiff to argue future medical expenses. (R. 911, pp. 591-92) Absent evidence as to plaintiff's life expectancy, and as the court originally ruled, there is no basis upon which an award of future medical costs can be made. *See, Uintah Basin Medical Center v. Hardy*, 2002 UT 92, ¶23, 54 P.3d 1165 (Award of future damages requires evidentiary basis, including evidence of life expectancy); *Johnson v. Michelin Tire Corporation,* 812 F.2d 200, 210-211 (5th Cir.

1987) (New trial granted on award of future medical expenses in absence of evidence of life expectancy); *Estate of Zarif v. Korean Air Lines, Co.*, 836 F.Supp. 1340, 1352 (E.D. Mich. 1993) (Future damages not awarded due to absence of evidence of life expectancy). Moreover, Schindler was clearly prejudiced by the court's ruling, which effectively precluded it from providing expert testimony as to life expectancy. A directed verdict in the amount of $0.00 should accordingly be entered for plaintiff's past and future special damages.

III. THE TRIAL COURT ERRED IN DENYING SCHINDLER'S MOTION FOR A NEW TRIAL

A. A New Trial Should Be Granted Based on the Trial Court's Instruction to the Jury Regarding Aggravation of Pre-Existing Injuries

It is axiomatic that "the facts of the case must merit the proposed instruction." *Robinson v. All-Star Delivery, Inc.*, 1999 UT 109 ¶ 13. 992 P.2d 969. "It is error to instruct the jury if such instruction "tends to mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advises the jury on the law." *Id.* ¶ 16; *Tingey v. Christensen*, 1999 UT 68 ¶ 16, 987 P.2d 588. Furthermore, jury instructions "may not serve to mislead the jury in any way." *Richardson v. Missouri Pac. R.R.*, 186 F.3d 1273, 1279 (10th Cir. 1999).

In this case, the only claim raised in plaintiff's Complaint was a claim for negligence. The Complaint did not assert that any pre-exiting injury was aggravated by the fall. At trial, Schindler objected to testimony that the fall aggravated plaintiff's pre-existing injuries on the basis that aggravation of a pre-existing condition was not a claim in the case. Although pleadings may be amended to conform to the evidence under Rule 15, plaintiff never moved and the Court did not amend the pleadings to conform to the evidence regarding

aggravation of pre-existing injuries. Absent such amendment, a claim for aggravation does not exist since "Rule 15(b) makes no provision for automatic amendment when, as here, proper objections are made to the admission of evidence." *In re Santa Fe Downs, Inc.*, 611 F.2d 815, 817 (10th Cir. 1980).

Although aggravation of a pre-existing injury was not at issue in the case, the Court nonetheless gave jury instruction No. 28 which instructed the jury that the plaintiff could recover damages for aggravation of pre-existing conditions. Further, the instruction proposed by plaintiff, and to which Schindler objected, is not the form set forth in MUJI 27.6 or 27.7 and misstates the law. Included in the instruction given was the following:

> When the pre-existing condition makes the damages from injuries greater than they would have been without the condition, it is your duty to try to determine what portion of the injuries to plaintiff was caused by the pre-existing condition and what portion was caused by the resulting injuries from exiting the elevator.
>
> If you are not able to make such an apportionment, then you must conclude that the entire injuries resulting for the Plaintiff's exiting the elevator was caused by the defendant.

(R. 0628) That portion of the instruction, which is not included in either MUJI instruction, effectively places the burden on Schindler to prove both the pre-existing condition and that the injury claimed was entirely the result of that condition. Absent that proof, there is a presumption given that no damages should be attributed to that condition. The aggravation instruction to the jury allowed the jury to believe they could award damages based on aggravation even where no such claim was at issue. Indeed, the instruction imposed a presumption that all plaintiff's injuries, whether found to be pre-existing or not, were the

result of the accident despite the fact that a claim for aggravation was never raised by plaintiff. Schindler is therefore entitled to a new trial.

B. The Trial Court Erred in Failing to Grant Schindler a New Trial Based on the Improper Opening and Closing Arguments of Plaintiff's Counsel

Utah courts have held that "pleas plainly designed to elicit sympathy or to inspire passion or prejudice should not be allowed." *Donohue v. Intermountain Health Care, Inc.*, 748 P.2d 1067, 1068 (Utah 1987). Counsel's closing arguments are improper where they attempt to "appeal to the social or economic prejudices of the jury . . ." *Id.* For example, Utah courts have concluded that statements such as the following are improper and justify the grant of a new trial:

> In our system, a small, but an injured party, is allowed, through the jury system, to take on the strong and the mighty, and have an even chance of success.
>
> Suing IHC is like suing Mother Nature in this community.

Id. In addition, Utah courts do not permit a lawyer to express personal knowledge regarding the case. Rather, "objective detachment . . . should separate a lawyer from the cause being argued." *State v. Parsons,* 781 P.2d 1275, 1284 (Utah 1989); *State v. Brown,* 853 P.2d 851, 860 (Utah 1992).

In this case, plaintiff's counsel's opening statement and almost his entire closing argument were nothing but pleas to the jury's "social and economic prejudices" and emotion based on the notion of "big corporation vs. the weak individual," attacks on the credibility and motivations of opposing counsel and personal vouching for his client's credibility. Plaintiff repeatedly referred to Schindler's size as large corporation with many employees and

resources, inferring that plaintiff should be compensated solely because Schindler could afford to pay a judgment. On that theme, plaintiff's counsel also and incorrectly, stated that Schindler's counsel worked for "one of the biggest law firms in Salt Lake City" and referred to Schindler's counsel as "big time lawyers." Counsel repeatedly accused Schindler of employing improper tactics during trial and characterizing Schindler's counsel's actions as "reprehensible." Counsel stated and inferred that Schindler had called plaintiff a liar, that Schindler's counsel was dishonest and had tried to deceive them with "smoke and mirrors" in their presentation of the evidence.

Finally, counsel stated, over and over, that plaintiff was an honest person who went to church and lived a good life, inferring that plaintiff was entitled to compensation on that basis alone. Counsel for plaintiff also repeatedly personally "testified" as to his client's credibility stating that Connie wouldn't do that, Connie isn't that type of person, Connie is honest and Schindler doesn't know Connie, "I know Connie."

Plaintiff's counsel did not make only one or two references like those set forth above. Rather, these types of statements and implications were made continually throughout opening and closing argument, comprising almost the entire two hours of plaintiff's closing argument which was, coincidentally, almost entirely devoid of reference to the evidence. This repeated, inflammatory and overblown hyperbole, with little reference to any evidence in the case, was clearly designed to appeal to the "social and economic prejudices" and emotion of the jury and obviously caused the jury to award excessive damages to plaintiff not based on the evidence but based purely on the passion and prejudice deliberately evoked by plaintiff's counsel.

Also during closing argument, counsel for plaintiff suggested to the jury, over Schindler's objection, that it was Schindler's burden to produce medical evidence contrary to the doctors that testified on behalf of plaintiff No such burden exists in the law It is not Schindler's burden to disprove plaintiff's claims or damages Rather, it is "fundamental that the burden rests upon the plaintiff to establish the causal connection between the injury and the alleged negligence of the defendant The causal connection between the alleged negligent act and the injury is never presumed and this is a matter the plaintiff is always required to prove affirmatively" *Fox*, 2007 UT App 406 ¶ 21

The medical testimony was a critical issue in this case and the direction of plaintiff's counsel that Schindler had failed to meet a legal burden in that regard undoubtedly misled the jury Plaintiff's counsel's improper instruction to the jury on this critical issue in closing argument was prejudicial to Schindler and a new trial should be granted

After closing argument, the trial court expressed concern about plaintiff's counsel's closing argument and acknowledged that counsel had "testified" as to his client's credibility The trial court, however, erroneously refused to grant a new trial based on the improper opening and closing statements of counsel The trial court's ruling in that regard should be reversed and a new trial granted on the basis that the jury was tainted by passion and prejudice as a result of counsel's repeated improper remarks

CONCLUSION

For the foregoing reasons, Schindler respectfully requests that the jury verdict be vacated, a directed verdict entered in favor of Schindler or a new trial be granted.

DATED this 3rd day of September, 2009.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

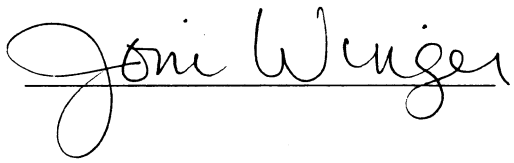
By: _____

Scott M. Lilja
Cassie J. Medura
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I caused two (2) true and correct copies of the within and foregoing **BRIEF OF APPELLANTS** to be mailed, postage prepaid, this 3rd day of September, 2009, to the following counsel of record:

GRIDLEY WARD & VANDYKE
Erik M. Ward (3380)
Lindy W. VanDyke (8406)
635 25th Street
Ogden, Utah 84401
Telephone: (801) 621-3317
Counsel for Appellees



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ADDENDUM A

Date of Service: 06/15/2004
PATIENT ACCOUNT NO.: 78256658

TIME: 1414 hours

EMERGENCY DEPARTMENT REPORT

CHIEF COMPLAINT: Dizziness.

HISTORY OF PRESENT ILLNESS: This patient is a 54-year-old female who has worked at the I.R.S. and was stuck in an elevator for nearly one hour and then after coming out of the elevator was quite upset, emotional, and had a syncopal episode associated with some mild chest tightness. The chest discomfort is gone She still feels washed out and weak. The patient was having no other chest discomfort.

ALLERGIES: Reported to codeine.

MEDICATIONS: Current medications include Levoxyl, Lipitor, an antihypertensive med, nitroglycerin, and Premarin.

PAST MEDICAL HISTORY: She has a history of coronary artery disease. He headache a history of hypertension and elevated cholesterol.

FAMILY HISTORY: Positive for coronary artery disease.

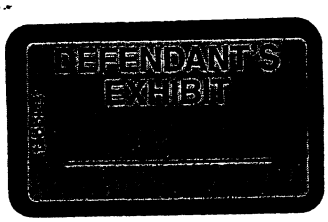
SOCIAL HISTORY: She is married and works at the I.R.S..

HABITS: Denies the use of tobacco or alcohol.

PAST SURGICAL HISTORY: Back surgery two years ago, hysterectomy, cholecystectomy.

REVIEW OF SYSTEMS: Otherwise negative complaints. She denies other complaints. No pain, injury, or trauma. No nausea or vomiting. No diaphoresis. No urinary symptoms. No other system complaints.

PHYSICAL EXAMINATION:
VITAL SIGNS: Temperature 36.5, pulse 66, respirations 22, blood pressure 142/94. Room air sats are 96%.
GENERAL: Physical examination shows an alert and oriented female.
HEENT: Eye examination is normal. Pupils equal round and reactive to light. Neck is supple without adenopathy and no jugular venous distention. Ears, nose and throat exam is normal.
LUNGS/CHEST: Chest is clear without wheezes, rhonchi and rales.
HEART: Regular rate and rhythm without murmur. No chest wall tenderness.
ABDOMEN: Soft and nontender.
EXTREMITIES: Exam is normal. Grip strength is symmetrical.
NEUROLOGIC: Mental status is normal.



SKIN: Warm and dry without rash.

DIAGNOSTIC STUDIES: CBC shows a white count of 5700, hematocrit is 39.1., troponin I is normal. CK, CKMB, and troponin are normal. A chem-7 panel shows a potassium of 3.3 and otherwise is normal.

EKG - INTERPRETATION BY ED PHYSICIAN(S): An EKG was done. The EKG shows a normal sinus rhythm with a ventricular rate of 60 beats per minute. Axis is normal. QRS intervals is normal. There is no abnormal ST segment changes. No evidence of injury or ischemia or arrhythmia. This is interpreted as normal by the emergency room physician.

MANAGEMENT/EMERGENCY DEPARTMENT COURSE: The patient came by ambulance. She has an IV in placed. Orthostatic vital signs are normal here. She has received no other intervention other than the fluids that were started by paramedics. She is feeling better here at this time.

DIAGNOSIS/ASSESSMENT:
1. Vasovagal syncopal episode.
2. Hypokalemia.

DISPOSITION/PLAN: Disposition is to home. The patient is given a prescription for Micro-K to take for the next two weeks or so. She is to followup with regular physician or here p.r.n. recurrent worsening symptoms or concerns.

ROBERT J. ALLEY, MD

CC:

RJA/mms VID: 876519 TID: 501420 D: 06/15/2004 15:45:18 T: 06/16/2004

EMERGENCY DEPARTMENT REPORT
PATIENT NAME: FLOREZ, CONNIE
MR#: 048663
PHYSICIAN: ROBERT J. ALLEY, MD
ACC#: 78256658
DOB: 02/14/1950
DATE: 06/15/2004
1

<end footer)

ADDENDUM B

SUBJECTIVE: Connie is a 47-year-old woman with ringing in both ears, dizziness and hearing loss. The hearing loss she has noted for over a year. The ringing and the dizziness for the past six to seven months. She complains that her left ear often feels plugged and the hearing fluctuates in that ear. The dizziness she describes is lasting for several seconds, occurring multiple times a day and she at times feels like she will black out. She does describe a spinning-type sensation which sounds like a true vertiginous episode. She states that this can happen at any time, she can be sitting still, moving, it does not seem to make any difference if she is laying down in bed or turning her head quickly. She does have headaches on a daily basis. These are not associated with her vertigo. She has had these for many years.

She has a family history of hearing loss in her mother in her 70s. There is no history of noise-induced hearing loss.

She does not smoke cigarettes. She does not drink alcohol.

Currently she takes Elavil, estrogen and a migraine medication.

She does have tinnitus in both ears which she's had for six to seven months as I mentioned earlier.

She has allergies to penicillin, codeine, phenobarbital and Voltaren.

She has no hypertension, no asthma or other lung disease, no kidney disease, no heart disease and no diabetes.

She has a history of a nasal septoplasty and an abdominal hysterectomy. No other ear, nose or throat surgery.

OBJECTIVE: On ear exam both ear canals and eardrums appear normal. Her extraocular movement appear full, though there is a question of a slight nystagmus to the left. The nasal septum is slightly deviated to the left. Her tongue shows no masses or lesions. Tonsils are small and neck shows no masses. The 5th and 7th cranial nerve show no abnormalities. A Romberg test was normal.

ASSESSMENT: Connie has a form of vertigo but unfortunately I am not sure what the cause is. I did do an audiogram today which shows a mild hearing loss in both ears, this is actually a little bit in the low and mid frequencies and maybe not quite as bad in the high frequencies. It is relatively symmetric and her SRT is 15 so she is really borderline as to whether you would call this mild hearing loss. It just has an unusual look to the pattern of the hearing. She also other than the dizziness describes the ringing and a feeling of tiredness and fatigue. I did review blood work ordered by Dr. Faucett which showed normal CBC. Her cholesterol and electrolytes were all normal.

PLAN: What I suggested is that we get and ENG on Connie and also order a TSH and a free T-4 to make sure that she doesn't have hypothyroidism. I will review the blood work and also the ENG and then see her back after these tests are done.

Brian K. Peterson, M.D./TMT:012
Transcribed: 11/21/96
cc: Dr. Faucett

NOV 25 1996

NAME Florez Connie ADDRESS HOME TEL.

BILL TO BUS. TEL.

DATE BIRTH DATE AGE 47

REFERRED BY Dr. Fawcett OCCUP.

COMPLAINTS: Ringing in both ears / dizzy

HISTORY: 7 yrs h/o [illegible]

Left ear plugged difficulty hearing

dizziness - blackout almost

can occur c vertigo

lasts seconds - multiple x/day

happen anytime (+) headaches [illegible] c vertigo

[illegible] ETOH

TREATMENT Elavil, Estrogen, migraine medication

EAR: OTORRHEA EARACHES HEARING TINNITUS (+)(+) x6-7 yrs

VERTIGO (+)

NOSE: DISCHARGE P.N.D. OBSTRUCTION EPISTAXIS

THROAT: SORE THROATS MOUTH BR. HOARSE COUGH

DYSPHAGIA HEMOPTYSIS

HEADACHES: LOCATION FREQ.

ALLERGY: H.F. ASTHMA (-) URT. ECZ.

DRUG ALLERGIES PCN, Codeine, Phenobarb, Voltaren

DISEASES: MEASLES MUMPS DIPHTH. SC. FEVER COLDS

HIGH B. P. (-) DIABETES (-) HEART (-) BLEEDING TENDENCY KIDNEY (-)

OPERATIONS: ENT: Nasal surgery; Lung [illegible]

OTHER: TAH

EAR: R CANAL wnl L

M.T. wnl

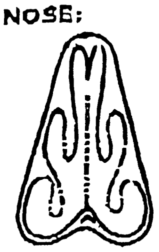
NOSE: M. M. TURB. B.S. [illegible]

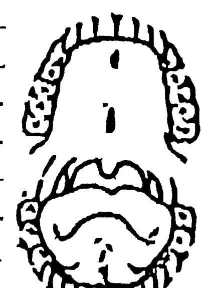
SEPTUM [illegible] left

E.T.

NASO-PH. SECRETIONS

ADENOIDS

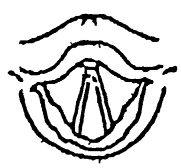




THROAT: TONGUE TONSILS wnl

PHARYNX

TEETH wnl



[illegible]

LARNYX CORDS ARYTENOIDS EPI.

NECK [illegible]

X-RAY

HEARING TEST

VESTIBULAR TEST [illegible]

IMP.

ADVISE [illegible]

[illegible]

ADDENDUM C

Name: Connie Flores	Occupation
Address	Primary Care Physician: Constansen
	Responsible Party

Complaint of Visit/CC: Inner ear infection. Started Monday. Got up & felt dizzy [illegible] ... if it will come in bed ... left ear always plugged & muffled sounds when I am in a tunnel ... see 1996 Dr. Peterson report. ... back surgery.

Treatment

REVIEW OF SYSTEMS

CONSTITUTIONAL
- Fever
- Weight Loss/Gain
- Recent URI

EARS
- Otorrhea
- Pressure
- Infections
- (+) Pain
- (+) Tinnitus L > R
- Noise Exposure
- (+) Hearing Loss
- (+) Vertigo

NOSE
- Epistaxis
- Smell
- Mouth Breathing
- Trauma
- (−) Postnasal Drainage
- Apnea
- Surgery
- Snoring

Lots of breathing prob on (L) side

THROAT
- Odynophagia
- (+) Frequent Infections — got swollen glands a lot

LARYNX
- Soreness
- Voice Change

HEADACHE
- Location
- Frequency

EYES
- Vision Change
- Redness
- Pain

SKIN
- Lesions
- Discoloration

PAST MEDICAL/SURGICAL HISTORY
- Hypertension: yes
- Diabetes: Ø
- Renal: Ø
- Pulmonary: Ø
- Bleeding
- Cardiac History: yes
- Current Meds: Altace, Lipator, Premarin, Evoxac
- H&N Surgery
- Other Surgery: Back Fusion

ALLERGIES
- / Hayfever
- / Desensit
- / Allergy
- / Skin Tests
- / Asthma
- / Diabetes

MEDICAL ALLERGY
PCN, Codine

SOCIAL HISTORY
- Tobacco Ø
- Alcohol Ø
- Caffeine yes

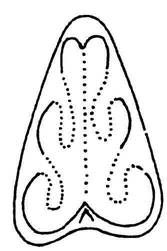
FAMILY HISTORY
- X Allergy
- X Heart Disease
- X Asthma
- Diabetes
- X Hear Loss
- X Cancer
- Hypertension

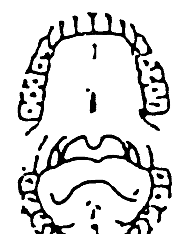
mother, dad.

PHYSICAL EXAMINATION

	☑ if neg	Abnormal Findings
GENERAL APPEARANCE		WN WD NAD
Development		
Body Habits		
Nutrition		
HEAD		
Inspection		Normal
Sinus Palpation		EOMI. Ø nystagmus
Salivary Glands		
EYES		
Movements		EOMI
Pupils		
Ophthalmoscopic Exam		
SKIN		
Appearance		Nl
LYMPH NODES		
Palpation		Ø
EARS		
Auricle		Nl
Canal		Clear
Tympanic Membrane		central aer
Weber AD LO		2K notch (L)
Impedence		WNL — although (R) reflex absent — mild cond component
NOSE		HALLPIKE — induce pos (L) canalith ... CN tol reposition
Mucosa		
External		Dev Septum (L)
Septum		(R) airway patent
Turbinates		
Middle Meatus		
Endoscopy		
PHARYNX		
Oral Mucosa		Ø defect
Palate		[illegible]
Tongue		[illegible]
Tonsils		
Uvula		
Nasopharynx		

	☑ if neg	Abnormal Findings
LARYNX		
Endoscopy		
True Cords		
False Cords		
Epiglottis		
Arytenoids		
Phonation		Nl
NECK		Prom carotid bulb (L)
Thyroid		
Trachea		...





RADIOLOGY

LABS

DNS c chronic rhinitis — ... ... but hold for now.

IMPRESSIONS

Bil ASHL w/ mild cond. component
Postural vertigo — but not clear cut BPPV — localization c
... 1996

DEFENDANT'S EXHIBIT

GDEN CLINIC

4650 Harrison Blvd. Ogden, Utah 84403
Phone 801-479-4621

CLINICAL AUDIOLOGIST

- ☐ Starla M. Wanlass, M.S. CCC-A
- ☑ Laurel C. Brewer, M.S. CFY-A

Age 52 Date: 5.20.02

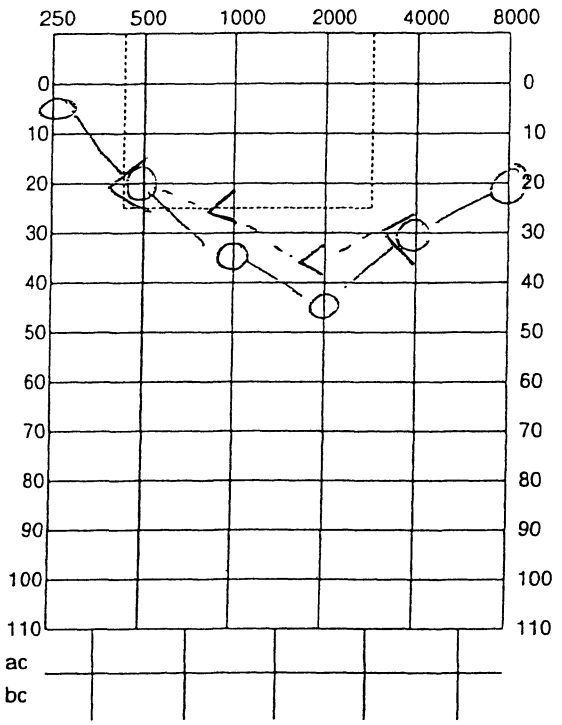
RIGHT	SYMBOLS	LEFT
AC UNMASKED	O	AC: UNMASKED X
MASKED	Δ	MASKED ☐
BC UNMASKED	<	BC: UNMASKED >
MASKED	[	MASKED]
S SOUNDFIELD		★ MASKED

- ☐ Ear Phones (TDH-50)
- ☑ Insert Phones (Eartone 3A)

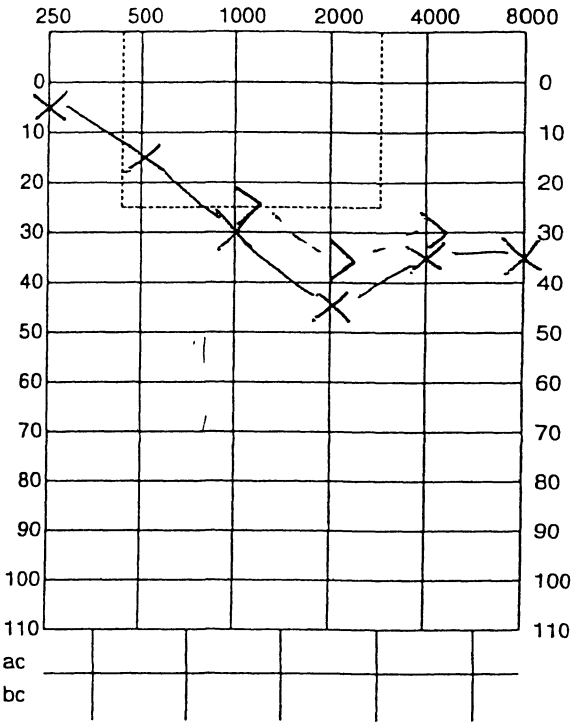
Patient Response.
- ☑ Standard
- ☐ VRA
- ☐ CPA
- ☐ BOA

AUDIOMETRIC EVALUATION

RIGHT EAR
Frequency in Hz

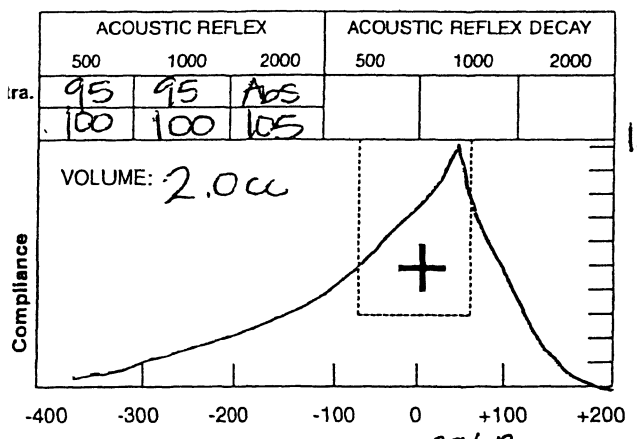


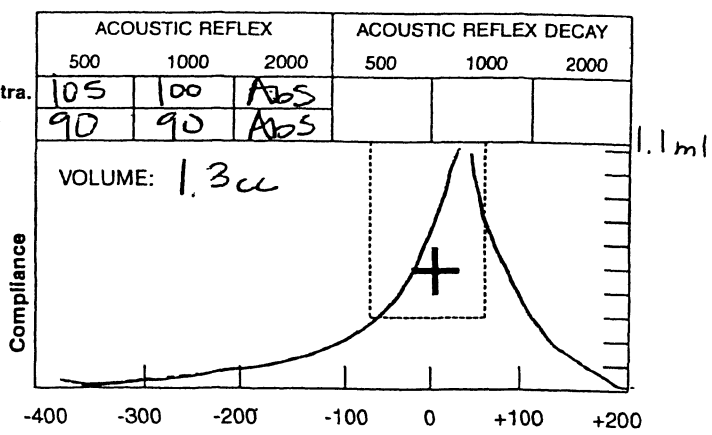
LEFT EAR
Frequency in Hz



SPEECH AUDIOMETRY

AC SRT 30 dB	MCL ____ dB	100 % @ 55 dB HL	S SRT ____ dB	AC SRT 35 dB	MCL ____ dB	100 % @ 55 dB HL
BC SRT ____ dB	UCL ____ dB	____ % @ ____ dB HL	S SDT ____ dB	BC SRT ____ dB	UCL ____ dB	____ % @ ____ dB HL
PTA ____ dB				PTA ____ dB		





Comments: Referred by John Sidaway, MD
performed CRT on left side, provoked dizziness and nystagmus. When repeated test got nauseous and felt worse. Didn't finish CRT today - gave patient handout for home use & she can call us to repeat again

ADDENDUM D

ıme Cordnie Flores
ldress

Birth Date [illegible]
Occupation
Primary Care Physician Dr. Armon
Responsible Party

Office Phone #

ent of Visit/CC lump in [illegible] dizzy [illegible] - noticed fluid in ear
Noted lump.
Rx antibiot x 10 d - but lump bigger.
No pain.
intermittent - difficulty chewing because jaw gets weak
eatment

REVIEW OF SYSTEMS

ONSTITUTIONAL
__ Fever __ Weight Loss/Gain __ Recent URI

When I lay down or sit up or roll over in bed I get spinny & nausea.

ARS
__ Otorrhea __ Pain __ Hearing Loss
__ Pressure __ Tinnitus __ Vertigo
__ Infections __ Noise Exposure

OSE / when I blow it is watery. (R) side always blocked.
Epistaxis stuffy __ Trauma __ Surgery
__ Smell __ Postnasal Drainage __ Snoring
__ Mouth Breathing __ Apnea

HROAT
__ Odynophagia (0) Frequent Infections rarely get S.T.

ARYNX
__ Soreness __ Voice Change

EADACHE
__ Location __ Frequency

YES
__ Vision Change __ Redness __ Pain

KIN
__ Lesions __ Discoloration

PAST MEDICAL/SURGICAL HISTORY

Hypertension ✓
Diabetes 0
Renal 0
Pulmonary 0

Bleeding

Cardiac History 0

Current Meds Lorazepam (?) Lipitor premarin BP Rx

H&N Surgery

Other Surgery

LLERGIES
0 Hayfever 0 Skin Tests
0 Desensit 0 Asthma
0 Allergy 0 Diabetes

MEDICAL ALLERGY ✓
Codeine
Penicillin
Niacin

SOCIAL HISTORY
Tobacco 0
Alcohol 0
Caffeine ✓

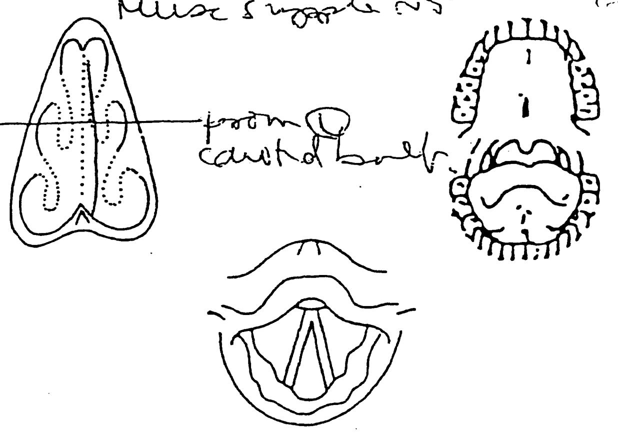
MILY HISTORY
0 Allergy 0 Heart Disease 0 Diabetes ✓ Cancer
0 Asthma 0 Hear. Loss ✓ Hypertension father

PHYSICAL EXAMINATION

ENERAL APPEARANCE	☑ if neg Abnormal Findings
evelopment	WN WD NAD
ody Habits	Thin & normal
utrition	
EAD	
spection	Normocephalic
nus Palpation	
alivary Glands	
YES	
ovements	EOMI.
upils	
phthalmoscopic Exam	
KIN	
ppearance	
YMPH NODES	
alpation	No specific node palp
ARS	
uricle	Nl
anal	clear
ympanic Membrane	intact.
leber	
npedence	
OSE	
lucosa	
xternal	
eptum	Sev (L) w/ nasal obst (L)
urbinates	
liddle Meatus	
ndoscopy	
HAYRNX	
ral Mucosa	WNL
alate	
ongue	
onsils	small
vula	
asopharynx	
MPRESSIONS	BPPV

LARYNX	☑ if neg Abnormal Findings
Endoscopy	
True Cords	
False Cords	
Epiglottis	
Arytenoids	
Phonation	
NECK	
Thyroid	S/NT, NT, (L) mass / nodule
Trachea	

Mass suggests NS



prom (L) carotid bulb.

DNS → Refer.

Do not find specific neck mass - may have lymph node

DEFENDANT'S EXHIBIT

RADIOLOGY

JOHN SIDDOWAY M.D.

SEP 17 2004

LABS

OGDEN CLINIC

MR#: 029998

OGDEN CLINIC OTOLARYNGOLOGY
4650 HARRISON BLVD., OGDEN, UTAH 84403
(801) 479-4621 FAX:(801) 476-2306

Florez, Connie V.
DOB: 14 February 1950
Ogden Clinic Record Number: 029998
Date of Service: 17 September 2004
CHIEF COMPLAINT: dizziness and lump in the neck.
HISTORY OF THE PRESENT ILLNESS: this is a 64-year-old patient of Kelly Amann, D.O., who comes in for consultation regarding dizziness and a lump in the neck. The imbalance was of sudden onset when she woke up one day. She had fluid in her ear and a lump in the neck below her ear. She was treated with antibiotics for 10 days without resolution of her symptoms. There are no complaint pain. She describes a sensation of blockage were plugging in the left ear. She develops spinning and nausea when she said that were lays down. This also happens if she rolls over in bed
REVIEW OF SYSTEMS: intermittent difficulty chewing because of jaw weakness. Nose is frequently congested. She gets blood streaking in the nasal mucus after blowing nose sometimes. She really has sore throat symptoms.
PAST MEDICAL HISTORY: hypertension.
MEDICATIONS: Levoxyl, Lipitor, Premarin.
ALLERGIES: penicillin, codeine.
SOCIAL HISTORY: denies use of tobacco or alcohol.
FAMILY HISTORY: cancer and hypertension.
OBJECTIVE: The patient is well nourished, alert and in no acute distress. Body habitus is been to normal. HEAD: Normocephalic. EYES: Conjunctiva are clear and without chemosis. Extraocular movements are intact. EARS: Auditory canals are patent. Tympanic membranes are intact and without inflammation. No air-fluid levels are seen. NOSE: there is significant deviation of the septum toward the left with airway obstruction on that side. ORAL: Mucosa is intact and without lesion. The buccal mucosa is smooth. There is no inflammation. The tonsils are small. LYMPHATIC: there is no cervical lymph node enlargement. The left carotid bulb is very prominent. THYROID: The gland is soft and symmetrical. No masses or nodules are palpated.
IMPRESSION: I do not find any specific lymph node enlargement or mass in the neck apart from the carotid bulb. There may be a lymph node adjacent to the bulb. Her symptoms are quite typical for benign positional vertigo. She does have a deviated nasal septum consistent with her nasal obstruction.
DISPOSITION: Hallpike testing indicates a right-sided canalithiasis. Canalith repositioning was completed by Laurel Brewer. We will follow-up if her symptoms persist. Ultrasound evaluation of the neck would be useful to identify any abnormalities in the neck. Recommendation is also made to use saline nasal spray contract reduced nasal irritability.
John R. Siddoway, M.D.
copy: Kelly Amann, D.O.

10/1/04

OGDEN CLINIC

Blvd Clinic
rrison Blvd
Utah 84403
9-4621

View Clinic
12th Street
Utah 84404
14 3000

gton Blvd Clinic
Washington Blvd
Utah 84403
76-5100

Dee Gastro Clinic
arrison Blvd
655
Utah 84403
67 2550

Dee Allergy Clinic
Harrison Blvd
640
Utah 84403
87-4850

Valley Clinic
North Highway 162
Utah 84310
745-3574

ilitive Services Clinic
Harrison Blvd
), Utah 84403
475-7010

ray Center Clinic
ast 5350 South
160
n, Utah 84405

September 17, 2004

John Siddoway, M.D.
Harrison Clinic

PATIENT: Florez, Connie
MR#. 02-99-98

Dear Dr. Siddoway,

Thank you for your referral of Ms Florez who was seen today for a canalith repositioning maneuver

TEST RESULTS:
The Dix-Hallpike maneuver was conducted on both the right and left side. Upon positioning with the right ear undermost the patient reported vertigo which was latent, fatigable and short in duration. No nystagmus was visualized I took Ms Florez through a CRT on the right side. On the second position no nystagmus was visualized and the patient denied vertigo. There was no response on the left side.

IMPRESSION:
Benign paroxysmal positional vertigo (BPPV) on the right side Her response is suggestive of canalithiasis of the posterior canal.

RECOMMENDATIONS:
The patient was given a handout describing the maneuver and listing activity limitations for at least the next 24 hours. If the vertigo continues, the patient can try repeating the maneuver at home or be seen for repeated positioning.

Thank you again for your referral.

Best Regards,

Laurel Brewer, M.S., CCC-A
Clinical Audiologist

ADDENDUM E

PATIENT:	Connie Florez
DATE OF BIRTH:	02/14/1950 (56 Years old)
GENDER:	Female
DATE:	05/19/2006 8:37 AM
DEPARTMENT:	ENT
VISIT TYPE:	Consultation
PROVIDER:	John Siddoway MD
STATUS:	New patient
REFERRING PROVIDER:	Kelly Amann DO
REFERRAL REASON	

Chief Complaints/ History of Present Illness

. **dizziness** The Patient/Historian describes it as Spinning;Onset: 2 Month(s) ago. The problem is worsening. She is also experiencing -Tinnitus. Pertinent negatives include -Earache. Additional information: Seen initally Sept 2003 with vertigo consistent with BPPV and responded well to canallith repositioning. Recurrance 12-04 with Hallpike, but could not tolerate repositioning. Presumed hydrops treated with Dyazide followed by consult with Dr. Gray at UUMC 02-05. Did well and stopped Dyazide about 4 months ago with recurrance of vertigo. Left ear feels like it is in a tunnel. Rings all the time. Spinning occurs randomly.

Chronic Conditions

. **Hypertension, Essential, Unspe.**
. **Hypercholesterolemia.**
. **Hypothyroidism Nos.**

Past Medical History

Reviewed, no changes. Last detailed document: 01/16/2006.

Family History

Reviewed no changes. Last detailed document: 01/16/2006.

Social History

Reviewed no changes. Last detailed document: 10/11/2004.

Medications (started before today):

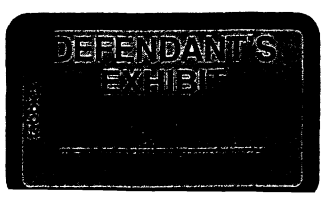
Brand	Dose	Sig Code	Start Date	Quantity	Sample
Naproxen Sodium	550mg	1T PO BID	04/11/2006	60	N
Syntest H.s.	1.25-0.625	*1T PO QHS	04/10/2006	30	N
Lipitor	20mg	1T PO QD	01/17/2006	90	N
Prinzide	20-25mg	1T PO QD	01/17/2006	90	N
Levoxyl	50mcg	1T PO QD	01/17/2006	90	N
Blood Pressure Kit Self-taking		0 DBM	01/16/2006	0	N
Trazodone	50mg	2T QHS	08/30/2005	60	N

Allergies:

Description	Reaction:	Comments:
Codeine	Hives	Codeine
Penicillins	Hives	Penicillin

Medical/Physical Exam

Constitutional: Well nourished well developed and in no apparent distress.
Head/Face: Facial features symmetric. Skull atraumatic, normocephalic.
Eyes: Right EOM's intact. No nystagmus. PERRLA. No injection.
Left EOM's intact. No nystagmus. PERRLA. No injection.
Comments: There is no nystagmus in primary or evoked gaze..
Ears: Right
Pinna normal to inspection.
Canal normal in caliber, no excessive cerumen, no drainage.
Normal tympanic membrane.



Canal normal in caliber, no excessive cerumen, no drainage
Normal tympanic membrane.
Nasopharynx: Mucosae are normal bilaterally
Septum is deviated to the left,
ongue: Normal.
Normal buccal mucosa.
No pharyngeal erythema or exudates or mucosal lesions.
Gag reflex: Present.
Supple, without adenopathy or enlarged thyroid.
No palpable cervical adenopathy.

Assessment/Plan

Meniere Dis Cochlvestib; -Established Problem: worsening

nterventions:

Medicines

Take new meds as prescribed.

Comments: Pt. wishes to consider surgical options. Consultation with Dr. Clough Shelton, UUMC arranged.

Pathophysiology discussed.

Medications (started today):

Name	Dose	Sig Code	Stop Date	Quantity	Sample
Dyazide	37.5-25mg	*1T PO QD		30	N
Valium	2mg			30	N
Hydergine	1mg			30	N

Medical Decision Making

Reviewed Ogden Clinic record 18 Months.

Content Reviewed: Office Visits Audiology notes

John R Siddoway, MD

ohn Siddoway MD

C Referring Provider:

elly Amann DO
650 Harrison Blvd
gden, UT 84403
hone: (801)476-2240
rimary Care Provider: Michelle Wasden PA

UNIVERSITY HEALTH CARE

PATIENT CONDITIONS OF ADMISSION AND TREATMENT

MRN 01157371-4
FLOREZ, CONNIE
02/14/1950 F

is document is an agreement between the University of Utah Hospitals and Clinics and the University of Utah Medical Group (referred to collectively as "University of Utah Health Sciences Center" or "UUHSC") and the Patient and/or the Patient s Guarantor ("You") In consideration of the health care rvices provided to you for the medical record number referenced above and on all accounts for present and future health care by UUHSC related to se services you agree as follows

CONSENT FOR TREATMENT You consent to health care, including x-ray examination laboratory procedures anesthesia medical, surgical, gnostic, and/or psychological treatment, by UUHSC, its physicians, nurses, and staff as directed by the patient's physician, or consultants selected by it physician Among those who attend to patients are medical, nursing, and other health care personnel in training who may be present or provide patient re as part of their education You understand that the practice of medicine is not an exact science and that diagnosis and treatment may involve risk of ury You acknowledge that no one has made any guarantee to you about the result of treatment or examination by UUHSC You agree that still or motion tures and closed circuit monitoring of patient care may be used for quality assurance or educational purposes, unless you request otherwise, in writing

FINANCIAL AGREEMENT You agree to pay your UUHSC bill in full on the date you are billed You will be charged UUHSC's regular fees or if you ve health insurance or health benefits coverage, the rate UUHSC has negotiated with that benefits provider If UUHSC refers your account to an attorney collection agency, you agree to pay UUHSC's actual attorney's fees and collection expenses You agree to pay 1 1/2% interest per month if your account comes more than 30 days past due

INSURANCE APPLICATION AND ASSIGNMENT OF BENEFITS You authorize UUHSC to apply, on your behalf, to Medicaid, Medicare or r health care insurance for payment of UUHSC's health care services You confirm that the information you have provided to allow UUHSC to apply for yment by any health care insurance or benefit is correct You authorize insurance, health plan, or statutory benefits, settlements and judgments to which are entitled in connection with your UUHSC hospitalization or outpatient services to be paid directly to UUHSC In consideration of the health care vices provided, you give UUHSC an irrevocable assignment to all rights you have in your insurance, health plan, statutory benefits, settlements and gments for which you are entitled, as necessary for payment for your UUHSC hospitalization or outpatient service You agree that you are financially ponsible for charges that are not covered by this assignment, and that you are responsible for satisfying any conditions necessary for insurance or health efits

GOVERNMENTAL IMMUNITY All claims for negligence, and other claims against UUHSC and its employees, including physicians, nurses, nicians and students, may be governed by the provisions of the Utah Governmental Immunity Act, Section 63-30-1 et seq Utah Code Annotated, 1953 amended, a special law restricting how and when a claim must be presented and limitations on the amount recovered

RELEASE OF INFORMATION UUHSC may release patient information to you, and to people or companies responsible to pay the UUHSC charges your care, such as worker's compensation carriers, if you were injured at work, or your insurance or health benefits company UUHSC also may disclose ent information to your referring or treating health care providers, and for educational, quality assurance, or medical research purposes UUHSC may close patient information for treatment, payment and health care operations When you are a patient at University Hospital, we may, at our discretion, pond to inquiries about your presence in the Hospital with your name and general condition If you do not want us to provide this "directory" information, must notify the Admitting Office, in writing UUHSC may also disclose patient information as authorized or required by law For information on our acy practices, please visit our website at http //uuhsc utah edu/privacy/

DISPOSITION OF TISSUE UUHSC will determine the proper disposition of any tissues, parts, or body fluids consistent with state and federal laws

PERSONAL VALUABLES University Hospital has a safe to store money and valuables UUHSC is not liable for the loss of or damage to money, ables, or other personal property unless you store those articles in the hospital safe If you do not reclaim items you have placed in the safe within thirty s of your discharge, UUHSC will dispose of the items according to state law

GOOD FAITH COOPERATION You agree to avoid conduct that may injure patients, visitors, or staff, or threaten the safety or orderly operation of HSC, and to cooperate and comply with this Agreement and UUHSC policies If you fail to leave when discharged or directed to do so by a physician UUHSC officer, you will be subject to all lawful remedies UUHSC has the discretion to assign private or semi-private rooms, based on patient census need

NON-DISCRIMINATION UUHSC provides health care services without regard to age, race, color, sex, religion, national origin, disability, sexual ntation, or veteran status

SIGNING, YOU INDICATE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO THESE TERMS, YOU HAVE RECEIVED A COPY OF THIS CUMENT, AND THAT YOU ARE THE PATIENT, THE GUARANTOR, THE PATIENT'S LEGAL REPRESENTATIVE, OR LEGALLY AUTHORIZED TO N THIS AGREEMENT AND ACCEPT THESE TERMS.

JUL 1 1 2006

E

CONNIE V Florez

ent Name (PLEASE PRINT)

Connie V. Florez

ature of Patient or Legally Authorized Representative/Guarantor

Name of Authorized Representative/Guarantor (PLEASE PRINT)

Self

Relationship to Patient

ADDENDUM F

Brian H. Morgan, M.D.
Physical Medicine and Rehabilitation
Electromyography

INDEPENDENT MEDICAL EXAMINATION

Patient: Connie V. Florez
SSN #: .-6468
Requesting: Erik Ward
Date of Evaluation: June 09, 2006

REVIEW OF RECORDS:

1. A letter dated May 25, 2006 from Erik Ward, Attorney-At-Law requesting independent medical examination and asking four specific questions.
2. A report from Angela Epstein, PA dated 10/25/99. Assessment: Viral gastroenteritis.
3. A note from Michelle Wasden, PA. Assessment: Chest pain, hypertension, and headache. Plan is for Cardiology followup with a treadmill test and a prescription for nitroglycerin.
4. A note from Michelle Wasden, PA dated 11/09/00. Assessment: Hypertension and chest pain, improved.
5. A note from Michelle Wasden, PA dated 11/27/00. Assessment: Hypertension.
6. A note dated 11/27/00 from Michelle Wasden, PA. Assessment: Hypertension and chronic neck pain.
7. A note dated 02/20/01 from Michelle Wasden, PA. Assessment: Acute depressive episode status post the death of a child.
8. A note dated 03/19/01 from Michelle Wasden, PA. Assessment: Depression/anxiety.
9. A note from Michelle Wasden, PA dated 06/18/01. Assessment: Vascular headache likely migraine and insomnia.
10. A note from Michelle Wasden, PA dated 03/19/02. Assessment: Pelvic pain.
11. A series of handwritten notes from Michelle Wasden, PA through the year 2002 and the beginning of the year 2003.
12. A note dated 04/25/03 from Van Christiansen, M.D. Assessment: Hyperlipidemia.
13. A note from Van Christiansen. M.D. dated 06/03/03. Assessment: Flushing, probably secondary to Niacin.
14. A note from David Nemetz. M.D. dated 11/19/03. Assessment: Wrist sprain.
15. A note from David Nemetz, M.D. dated 04/08/04. Assessment: Atypical chest pain.
16. A note from David Nemetz, M.D. dated 04/26/04. Assessment: Depression and chest pain probably secondary to #1.
17. A history and physical dated 10/11/04 from Debbie Whipple.
18. A preventative medical and physical exam dated 01/13/05 from Debbie Whipple, CNP.
19. Various laboratory findings from the Ogden Clinic that do not have relevance. Plan: This patient complains of dizziness.

20. A Ogden City Fire Department report dated 06/15/04 in which the patient was stuck on an elevator for approximately 45 minutes. The patient took nitroglycerin. The reason for transport was chest pain and dizziness.
21. A report dated 06/03/05 from Genene Burton, PT, Coordinator Balance Rehabilitation at the IHC Hearing in Balance Center. This report stated that the patient has been seen for two followup treatment sessions since her initial evaluation on 04/08/05 reporting that she is having absolutely no problem. She feels she is doing very well and almost returned to her prior status.
22. A report dated February 07, 2005 from Dean Gray, M.D. The disposition is that the patient has a positional type vertigo, one that should respond to rotational head movement.
23. Vestibular evaluation performed on 03/04/05 from Bryan Layton.
24. A report dated 04/08/05 from Genene Burton, PT.
25. An Emergency Department report from McKay-Dee Hospital dated 06/15/04 from Robert Alley, M.D. in which the patient was seen after being stuck in an elevator.
26. A report date 06/17/04 from Michelle Wasden, PA. This report states the patient had been trapped in an elevator for over an hour yesterday and as she stepped out quickly after the doors were open, she fainted. She presents with neck pain. Assessment: Neck pain. Plan was for oral medications and physical therapy.
27. An x-ray read 06/17/04 from Roger Fellows, M.D. The front, lateral, and swimmer's views at the lumbar spine reveal anterior osteophyte formation at the C5-6 level. Slight levoscoliosis at the T11 level and a compensatory dextrocurvature at approximately T5. Multiple postoperative metallic clips in the right and left upper quadrants of the abdomen. No evidence of acute fracture.
28. MRI scan of the thoracic spine dated 07/01/04 read as no evidence for thoracic spinal cord signal abnormality, central canal stenosis or neuroforaminal impingement. The intervertebral disc heights and vertebral body heights in the thoracic spine are well preserved. No evidence for disc protrusion or herniation.
29. A report from Kelly Amann, D.O. dated 07/14/04. The patient was seen for right rib pain. Assessment: Tietze's disease, chronic thoracic spine pain, acute, and somatic dysfunction of the rib cage.
30. Followup notes from Dr. Amann dated 07/16/04, 07/19/04, and 07/26/04.
31. A note dated 07/30/04 in which the patient was seen for ear discomfort, left, and seen by Damon Marsh, P.A. Assessment: Vertigo.
32. Followup dated 08/16/04 for dizziness. The patient was seen by Dr. Amann.
33. A report from John Siddoway dated September 17, 2004. Impression: "Symptoms were quite typical for benign positional vertigo".
34. A report dated September 17, 2004 from Laurel Brewer, M.S. Impression: Benign paroxysmal positional vertigo on the right.
35. Thyroid ultrasound read as normal by C. Mark Alder, M.D. on 09/20/2004.
36. A followup note from Dr. Siddoway dated December 22, 2004. Impression: Benign positional paroxysmal vertigo. Plan is for Valium.

37. A followup note from Dr. Amann dated 12/10/04 in which the patient was seen for neck pain.
38. A cervical spine x-ray dated 12/14/04 read by Dr. Alder as lower cervical degenerative disc disease.
39. A report dated January 14, 2005 from Dr. Siddoway. Impression: Unusual severity of benign positional vertigo with apparently marked sensibility.
40. A followup note from Dr. Amann dated 01/07/05 in which the patient was seen for back pain.
41. Cervical spine MRI read by Dr. Alder on 01/10/05. Impression: Degenerative disc disease, worst at C5-C6.
42. Audiology report-EMG dated 01/17/05. Impression: Benign positional vertigo involving the left labyrinth.
43. A series of physical therapy notes from the Ogden Clinic for the years 2004 and the year 2005.
44. An EMG study from Brad Melville, dated January 21, 2005. The impression is *electrodiagnostic studies today do not demonstrate a cervical radiculopathy*, brachioplexopathy, median or ulnar entrapment neuropathy on the left.
45. A radiology review dated February 24, 2005 from Brent Clyde, M.D., Neurosurgeon. The MRI scan of the cervical spine revealed a tiny broad-based prominence at C5-6 without nerve root impingement, canal compromise, or foraminal compromise. Review of the thoracic MRI is essentially normal without compromising spinal cord. spinal fluid's base, or significant abnormalities. Surgery was not recommended.
46. A report dated January 27, 2005 from Laurel Brewer, M.S. dated January 27, 2005. Impression: Negative today benign paroxysmal positional vertigo.
47. A report dated 01/20/2005 from Laurel Brewer stating that with testing the patient demonstrated vertigo.
48. A followup dated 01/27/05 from Dr. Amann in which the patient is seen to follow up on test results. Plan: The patient is to be referred to Dr. Frank Tilaro, Pain Management at Utah Pain and Rehab.

HISTORY OF PRESENT ILLNESS: Ms. Florez is a 56-year-old female who is seen today for purpose of independent medical examination. I have explained to the patient that I would be rendering a "second opinion" and will not be her treating physician. No patient/position relationship was established and no patient/physician relationship was solicited.

On this patient's pain diagram, she is describing pain in the left ear and left rib regions. No other areas on her body diagram are marked.

The patient reports that on 06/15/04 while performing her usual type job duties at the IRS Building in Ogden. Utah, she was in an elevator and became stuck between floors. The

patient reports that she was stuck between floors for approximately one hour. She reports that the elevator became quite warm and that she started having tachycardia. The patient reports that she has a history of chest pain and that she took nitroglycerin while in the elevator. The patient reports that when the doors were wide open and she stepped out of the elevator, she fell and hit her head on the left side. The patient reports positive loss of consciousness. The patient reports that she was taken to the Emergency Room and further work-up progressed (please see review of records). The patient reports no subsequent injuries although she does report a prior injury of an ear infection in the year 2002. Treatment has included adjustment to her ribs by Dr. Kelly Amann and vestibular rehabilitation. The patient reports that she has had MRI scans performed at McKay-Dee Hospital, which revealed "no tumors".

CURRENT SYMPTOMATOLOGY: The patient denies any weakness of either arm or leg. The patient denies any numbness of either arm or leg. The patient denies any problems with bowel, bladder, or sexual function. The patient reports that she is in pain 80% of the time. The pain is worse at 10/10. She reports her activity level as moderately restricted. She reports a limitation of walking due to dizziness and she "staggers". The patient reports that she has been under the care of Dr. Siddoway, for vestibular rehabilitation. She reports that she has an appointment with Dr. Shelton at the University of Utah on July 11, 2006 for her left ear difficulties. She reports that possible surgery may be contemplated.

CURRENT MEDICATIONS: Lipitor, Levoxyl, Prinzide, Premarin, Valium, Dyazide, and Hydergine.

ALLERGIES: Penicillin and codeine.

PAST MEDICAL HISTORY: Significant for back surgery in the year 2002 performed by Dr. Dibenedetto, hysterectomy in the year 1974 by Dr. Godfrey, cholecystectomy in 1980 by Dr. Shrene, and foot surgery unspecified in the year 2001.

FAMILY HISTORY: Pertinent for mother deceased at age 80 due to heart disease, father deceased at age 58 due to cancer, sister deceased at age 35 due to an auto accident, brother deceased at the age of 68 due to heart disease, and Parkinson's disease.

COMPLETE REVIEW OF SYSTEMS: Pertinent for headaches, dizziness, ear problems including ringing in the ears, neck pain, hypertension, thyroid problems.

SOCIAL HISTORY: The patient is married with five children. She is working full time at the IRS as a tax examiner. Hobbies include crocheting and cooking although she reports limited physical activities secondary to her dizziness. The patient denies smoking and denies use of alcohol.

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PHYSICAL EXAMINATION: On directed physical examination. Ms. Florez is 5 feet 1 inches, 138 pounds, blood pressure is 95/68, pulse is 69. She has a body mass index of 26. Ms. Florez was alert and oriented x4, cooperative to examination. She was in no acute distress. HEENT: Revealed a normocephalic, atraumatic head. Her pupils were equal, round, and reactive. Her extraocular muscles were intact, finger-finger-nose was intact. Range of motion of her neck revealed normal range of motion. However, as she rotated her head from left to right and right to left, she did experience vertigo-type symptoms. Thoracolumbar range of motion was grossly within normal limits. Range of motion of bilateral shoulders, elbows, wrists, and hands all within normal limits. Manual muscle strength testing of bilateral upper extremities revealed 5/5 strength with no deficits noted. Deep tendon reflexes were 2+ and bilateral biceps and brachioradialis and sensory was intact to pinprick and bilateral upper extremity dermatomes. Range of motion of bilateral hips, knees, ankles, and feet were within normal limits. Manual muscle strength testing of bilateral lower extremity, myotomes were within normal limits. Deep tendon reflexes were 1+ of bilateral knee and ankle jerk. Sensation was intact to pinprick of bilateral lower extremities. The patient was able to transfer independently. The patient was able to ambulate although had a shortened swing phase in bilateral lower extremities with increased time at which she had double stance. She was able to accept challenges through her balance although appeared that she was less stable than what would be expected.

IMPRESSION:

1. Status post injury on 06/15/05 when she had an accident in elevator, lost consciousness, and hit her head and neck.
2. Benign positional vertigo as related to the elevator accident.

RECOMMENDATIONS: I will address the letter dated May 25, 2006 from Erik Ward.

1. **The nature and extent of her injury including results of any objective testing are observable findings along with description of her symptoms.**
   It is my medical opinion that the patient has benign positional vertigo as her E.N.G testing reveals the vertigo. She has had vestibular rehabilitation training and has been under the care of Dr. Siddoway and Dr. Amann. The patient has observable findings including vertigo as she rotates her head and when I observed her ambulating, she was less stable than what I would have normally expected. The patient also reports a description of the symptoms that match and correlate with the above noted objective testing and the medical observable findings.
2. **An evaluation of permanent impairment or disfigurement with the AMA Guides to Evaluation of Permanent Impairment, Fifth Edition.**
   The AMA Guides to Evaluation of Permanent Impairment, Fifth Edition most appropriately recognizes dizziness in table 13-3 on page 312. The patient most appropriately fits into the Class I classification. This is defined "as paroxysmal

disorder with predictable characteristics and unpredictable occurrence that does not limit usual activities, but is a risk to the individual or limits daily activities or blood pressure drop of 15/10 mmHg without compensatory increase in pulse rate and lasting more than two minutes after precipitating even, with mile awareness loss that limits daily activities." This is defined as between a zero and 14% impairment of the whole person.

On page 312 of the Guides to Evaluation of Permanent Impairment, Fifth Edition, an example is made. This example is 13-5. The example outlines a 65-year-old man who was right handed, has brief episodes of interruption of speech, pale appearance, and light sweatiness with total recovery minutes for the past two years. These usually have occurred upon standing from a lying or seated position and associated with a lightheaded and/or dizzy sensation. The clinical studies show no neurological impairments. Diagnosis is dizziness and lightheaded and impairment rating was 4% impairment of the whole person.

It is apparent that at the current time the patient continues to have symptoms since the time of injury although in the medical record it states from the vestibular rehab notes that the patient was having no symptoms at that time. With the somewhat inconsistencies of current symptoms versus resolution of symptoms, I feel that the patient most appropriately fits into the 4% impairment of the whole person as outlined in example 13-5 on page 312 of the Guides to Evaluation of Permanent Impairment. This clearly fits into the Class I classification between 0 and 14% impairment of the whole person.

I do not feel that the patient warrants as impairment rating for her cervical spine as she is not reporting symptoms and her radiographic findings show chronic degenerative changes and an EMG study revealed no evidence of cervical radiculopathy. Therefore, I do not feel the patient wants any impairment rating for her cervical or thoracic spine.

I do not feel the patient has a permanent impairment of her ribs as she is currently only reporting subjective symptoms of pain and without radiographic evidence of a rib fracture or rib abnormalities, I do not feel that there is a justifiable evidence to support a permanent impairment.

3. **Any future medical attention that may be required and an estimated future expenses for such treatment.**

It is my medical opinion, that the patient will need further medical attention regarding her dizziness and benign positional vertigo. The patient may need further testing, medications, vestibular rehab, and/or possible surgery.

However, I am unavailable at the current time to estimate a future expense for such treatment.

4. **The prognosis and expected impact of the injuries on her daily activities.**

I feel that the patient's prognosis is fair; however, I do not feel that she will make much of an improvement in her current symptoms. It has been approximately two years since the elevator injury and at this point in time I feel that the patient has

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stabilized. Therefore, it is my medical opinion that no expected improvement is to be considered after this point in time. I do feel that the patient's symptoms will have continued impact upon her daily activities. The patient will probably be unable to participate in physical activities of required balance. I also feel that swimming may be detrimentalto her as she is having problems with balance and dizziness and any activity that requires her to swivel or rotate her head will probably cause a difficulty in the future. These will include driving, activities of daily living such as makeup and hair preparation as well as any cleaning activities that the patient may perform.

If there are any additional questions regarding this patient, please feel free to contact me at you convenience.

Sincerely,

Brian H. Morgan, MD
BHM/cts/BHM 0074

5405 South 500 East #200 Ogden, Utah 84405 – (801) 479-0312 FAX – 479-3364

.edger Query

Rendering Doctor: (= M), Rvs/Cpt: (= 2020)

2	08-03-01	CHG	I	000711		2020	DEPOSITION 1ST HR	700.00	M
156	08-17-01	CHG	c	008718		2020	DEPOSITION 1ST HR	200.00	M
157	08-17-01	CHG	aB	10207		2020	DEPOSITION 1ST HR	400.00	M
1	08-21-01	CHG	ac	008718		2020	DEPOSITION 1ST HR	400.00	M
12	09-11-01	CHG	P	12144		2020	DEPOSITION 1ST HR	400.00	M
52	10-05-01	CHG	c			2020	DEPOSITION 1ST HR	400.00	M
53	10-05-01	CHG	c			2020	SECOND HOUR DEPOSITION	400.00	M
51	07-30-01	CHG	a	006549		2020	DEPOSITION 1ST HR	400.00	M
182	11-21-01	CHG	c	008182		2020	DEPOSITION 1ST HR	400.00	M
408	12-07-01	CHG	a	007474		2020	DEPOSITION 1ST HR	400.00	M
82	02-22-02	CHG	P	007413		2020	DEPOSITION 1ST HR	400.00	M
83	02-22-02	CHG	P			2020	ADDITIONAL 30 MINUTES	200.00	M
288	06-14-02	CHG	C	11158		2020	DEPOSITION 1ST HR	400.00	M
232	07-12-02	CHG	c			2020	DEPOSITION 1ST HR	400.00	M
233	07-12-02	CHG	c			2020	DEPOSITION 1/2 HR	200.00	M
289	04-14-03	CHG	Ac	0009425		2020	MEETING WITH ATTORNEY 30 MIN	200.00	M
123	04-15-03	CHG	Ac			2020	DEPOSITION 1ST HR	400.00	M
124	04-15-03	CHG	Ac			2020	ADDITIONAL 30 MINUTES	200.00	M
19	10-25-02	CHG	ABc	006772		2020	DEPOSITION 1ST HR	100.00	M
40	02-27-04	CHG	AC	11232		2020	DEPOSITION 1ST HR	400.00	M
357	04-13-04	CHG	AC	0009425		2020	DEPOSITION 1ST HR	200.00	M
102	10-14-04	CHG	c	19185		2020	DEPOSITION 1ST HR	600.00	M
229	11-01-04	CHG	c	15214		2020	DEPOSITION 1ST HR	400.00	M
162	11-24-04	CHG	aBCI			2020	DEPOSITION 1ST HR	400.00	M
137	04-26-05	CHG	a	12521		2020	DEPOSITION 1ST HR	600.00	M
76	05-24-05	CHG	c	18725		2020	DEPOSITION 1ST HR	400.00	M
26 matching entries								**9600.00**	

CURRICULUM VITAE

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Internship:

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Charleston, West Virginia
1992-1993

Education:

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1988-1992

B.Sc., University of Southern California
Los Angeles, California
1984-1988

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On Hill Physician for the US World Cup Downhill and 2002 Olympic Downhill

Memberships and Societies:

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Association of Academic Physiatrists
International Spinal Injection Society
Utah Medical Association
Weber County Medical Society

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Industrial Medicine
Interventional Injections, including Epidurals and Selective Nerve Root blocks
Pain Management
Sports Medicine