

B-45459 NLI/ir
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ANTOINE N. PIERRE,

Index No.: 156227/13

Plaintiff,

-against-

SAMBA DIAWARA AND MENTWO TAXI, INC.

Defendants.

-----X

**EXPERT WITNESS
DISCLOSURE
PURSUANT TO
CPLR 3101(d)**

PURSUANT TO CPLR SECTION 3101(d), defendants Samba Diawara and Mentwo Taxi Inc. hereby state as follows:

Defendants, at this time, expect to call as an expert witness at the time of trial Julio V. Westerband, M.D., a physician qualified in the area of Orthopedics. Julio V. Westerband, M.D. is a graduate of an approved school of medicine; he is Board Certified.

Defendants' expert is expected to testify on subject matter concerning the physical injuries allegedly sustained by the plaintiff, and will base his opinion on the review of plaintiff's relevant medical records and the result of a physical examination he conducted on the plaintiff. A copy of his report from said examination is annexed hereto together with his curriculum vitae.

In addition, it is expected that Julio V. Westerband, M.D. will base his opinion on the trial testimony, medical literature and his expertise in the field of Orthopedics .

Dated: Long Island City, New York
October 9, 2014

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COUNTY OF NEW YORK

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**EXPERT WITNESS
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Dated: Long Island City, New York
October 9, 2014

Yours, etc.

LAW OFFICES OF
NANCY L. ISSERLIS

By: 

NANCY L. ISSERLIS

Attorneys for Defendants

OFFICE AND P.O. ADDRESS

36-01 43rd Avenue

Long Island City, NY 11101

(718) 361-1514

TO: DAVID B. LEVER & ASSOC., PLLC
Attorneys for Plaintiff
120 Bloomington Road, Suite 401
White Plains, New York 10605
(914) 288-9191

Julio V. Westerland, M.D., FACS, FAAOS

Diplomate American Board of Orthopedic Surgery

29 West 30th Street, 5th Floor
New York, NY 10001

June 20, 2014

MCMC
100 Jericho Quadrangle, Ste 103
Jericho, NY 11753

Claimant: Pierre, Antoine
Claim #: B-45459
File#: 24360-56316
DOA: June 15, 2013

To Whom It May Concern:

As you requested, I have performed an orthopedic evaluation in regards to Mr. Antonie Pierre, which took place on 06/20/2014 in the New York Office.

He presented his New York State Driver's License prior to this examination.

My office assistant, Alla, was present at the time of this examination. The following is the report of my findings:

ACCIDENT HISTORY:

The history was obtained from Mr. Pierre who reports he was involved in a motor vehicle accident on 06/15/2013. He was a pedestrian struck by a vehicle.

He states that he was rendered unconscious at the time of the accident.

Mr. Pierre reports initially he sustained injuries to his neck, left shoulder, right knee and right ankle.

Mr. Pierre states he was transported via an ambulance to the Emergency Room of Bellevue Hospital that same day for evaluation and treatment. He indicates X-rays of his right knee and right ankle were performed. He states that he sustained ankle fracture and left shoulder and right knee laceration, which required two stitches. He states that he was admitted to the hospital

for further observation and was released with a prescription for pain medications.

TREATMENT HISTORY:

Following the accident, Mr. Pierre states that he came under the care of various physicians for further assessment. He states he was started on a course of physical therapy and massage therapy at a frequency of two times per week. He reports the treatment received has been helpful. He states that additional X-rays of his right tibia, right knee and right ankle and MRIs of his neck, left shoulder, and right knee were performed. He denies undergoing any surgery.

MEDICAL HISTORY:

Mr. Pierre does not have a history of diabetes or hypertension. He denies any history of prior or subsequent accidents or injuries. He denies undergoing any prior surgery.

MEDICATIONS:

Mr. Pierre states he is currently taking pain killers.

ALLERGIES:

Mr. Pierre did not disclose any details regarding allergies.

EMPLOYMENT HISTORY:

Mr. Pierre states that he was employed full-time as a taxi driver at the time of the accident. He reports missing some time from work due to the accident. He states that currently he is working on a part-time basis at the same job performing modified duties.

PRESENT COMPLAINTS:

At the time of this examination, Mr. Pierre presents with complaints of pain in the neck, left shoulder, right knee, and right ankle.

REVIEW OF AVAILABLE RECORDS:

1. Verified Bill of Particulars Index no: 156227/13.
2. Evaluation report dated 07/11/2013 by Sukdeb Datta, M.D.
3. EMG/NCV study report dated 07/11/2013 by Sukdeb Datta, M.D.
Impression: The electrodiagnostic studies performed on the patient is consistent with cervical radiculopathy most severely affecting the bilateral C5 -C6 nerves. There are signs of denervation in the peripheral muscles supplied by the C5-6 nerve and paraspinal

musculature at that level. The upper back pain and spasms detected on physical examination are likely due to disc derangement at C5-6 level. This is consistent with cervical spine MRI documenting bulging disk at C2-C3 and C6-C7. It also demonstrates a herniated disk at C3-C4 through C5-C6. Epidural injections may be helpful in alleviating the radiation of pain and worsening neck and spasm prior to considering surgical decompression of the affected nerve root. The electrodiagnostic study of the upper extremities revealed evidence of bilateral mild carpal tunnel syndrome (Median nerve entrapment at the wrist) affecting sensory component.

4. Followup evaluation reports dated 07/08/2013 and 08/02/2013 by Gabriel L. Dassa, D.O.
5. Initial orthopedic evaluation report dated 06/24/2013 by Gabriel L. Dassa, D.O.
6. MRI report of the left shoulder dated 07/01/2013 by Michael J. Paley, M.D. Impression: Full thickness tears of the distal/anterior aspect of the supraspinatus tendon. Findings consistent with a ruptured long head of the biceps tendon. AC joint hypertrophy.
7. MRI report of the right knee dated 07/01/2013 by Michael J. Paley, M.D. Impression: Moderate to severe sprain of the medial collateral ligament. Bone contusion of the medial tibial plateau. Osteochondral lesion of the posterior aspect of the lateral femoral condyle. Intrasubstance signal changes of the medial meniscus. Clinical correlation is recommended.
8. MRI report of the cervical spine dated 07/03/2013 by Michael J. Paley, M.D. Impression: Bulging disks at C2-3 and C6-7. Herniated disks at C3-4 through C5-6.
9. X-ray report of the right ankle dated 06/24/2013 by Elliott Wein, M.D. Impression: status post casting of the right ankle for a nondisplaced fracture of the medial malleolus.
10. X-ray report of the right ankle dated 07/08/2013 by Elliott Wein, M.D. Impression: Status post casting of the right ankle for a nondisplaced fracture of the medial malleolus. Follow-up films with cast removal are recommended.
11. SOAP notes dated 09/03/2013 through 10/09/2013 from Vista Medical Rehabilitation, PC.
12. Physical therapy evaluation report dated 09/03/2013 from Vista Medical Rehabilitation, PC.
13. Emergency Department record dated 01/15/2013 from Bellevue Hospital Center.
14. X-ray report of the right knee dated 01/15/2013 from Bellevue Hospital Center. Impression: There is no significant osseous, articular, or soft tissue abnormality.
15. X-ray report of the right ankle dated 01/15/2013 from Bellevue Hospital Center. Impression: Nondisplaced obliquely oriented fracture of the medial malleolus with decreased distraction of the major fracture fragment compared to the prior study. Mild circumferential

soft tissue swelling. There is no other significant osseous, articular, or soft tissue abnormality.

- 16.X-ray report of the right tibia and fibula dated 01/15/2013 from Bellevue Hospital Center. Impression: Obliquely oriented fracture through the medial malleolus with intra-articular extension. There are moderate overlying medial ankle soft tissues swelling. No additional fractures of the tibia or fibula demonstrated.
- 17.X-ray report of the right ankle dated 01/15/2013 from Bellevue Hospital Center. Impression: Oblique fracture of the media malleolus with articular extension, 2-3 m of distraction and overlying soft tissue swelling remaining bones, joint spaces and articular surfaces are preserved
- 18.X-ray report of the right knee dated 06/18/2013 from Bellevue Hospital Center. Impression: There is no significant osseous, articular, or soft tissue abnormality.

PHYSICAL EXAMINATION:

Examination reveals a 57-year-old right-handed male. He is 6 feet tall, weighs 240 pounds, and he has black hair with brown eyes.

General Observation:

The claimant sits comfortably. He moves his head, neck, and body freely during the unguarded conversation. He gets on the examining table without assistance. He can turn from side to side or back to front freely. He can dress and undress his outerwear without assistance.

RANGE OF MOTION MEASUREMENTS:

Ranges of motion were measured using a goniometer. Normal ranges of motion are as per the A.M.A "Guides To The Evaluation Of Permanent Impairment", fifth edition.

ORTHOPEDIC EXAMINATION:

Cervical Spine: There is no muscle spasm upon palpation. There is no complaint of tenderness upon palpation.

Range of motion is flexion at 50 degrees (50 degrees normal), extension at 60 degrees (60 degrees normal), right lateral flexion at 45 degrees (45 degrees normal) and left lateral flexion at 45 degrees (45 degrees normal), and right rotation at 80 degrees (80 degrees normal) and left rotation at 80 degrees (80 degrees normal).

- Jackson's – negative.
- Soto Hall – negative.

Neurological examination of the bilateral upper extremities shows as follows: Muscle mass is within normal limits. Muscle strength in each range is at +5/5. Deep tendon reflexes are at 2+.

Thoracic Spine: There is no paraspinal spasm upon palpation. There is no complaint of tenderness upon palpation.

Right Shoulder: There is no heat, swelling, effusion, erythema, or crepitus appreciated. Range of motion is forward flexion at 180 degrees (180 degrees normal), extension at 50 degrees (50 degrees normal), abduction at 180 degrees (180 degrees normal), adduction at 50 degrees (50 degrees normal), internal rotation at 90 degrees (90 degrees normal), and external rotation at 90 degrees (90 degrees normal).

- Hawkins-Kennedy Impingement maneuver – negative.
- Supraspinatus Isolation Test – negative.
- Impingement maneuver – negative.
- Apprehension – negative.
- O'Brien - negative.

Left Shoulder: There is no heat, swelling, effusion, erythema, or crepitus appreciated. There is complaint of tenderness upon palpation in the supraspinatus.

Range of motion is forward flexion at 180 degrees (180 degrees normal), extension at 50 degrees (50 degrees normal), abduction at 180 degrees (180 degrees normal), adduction at 50 degrees (50 degrees normal), internal rotation at 90 degrees (90 degrees normal), and external rotation at 90 degrees (90 degrees normal). There is complaint of painful external rotation. There is complaint of tenderness in the bursa with soft tissue defect compatible with long head of biceps tear.

- Hawkins-Kennedy Impingement maneuver – negative.
- Supraspinatus Isolation Test – negative.
- Impingement maneuver – negative.
- Apprehension – negative.
- O'Brien - negative.

Right Knee: There is no heat, swelling, effusion, erythema, or crepitus appreciated. There is no complaint of tenderness upon palpation.

Range of motion is flexion at 130 degrees (130 degrees normal) and extension at 0 degrees (0 degrees normal).

- Lachman test – negative.
- Apley – negative.
- Stable on varus/valgus – yes.
- Patella tracking – negative.

- McMurray test – negative.

Left Knee: There is no heat, swelling, effusion, erythema, or crepitus appreciated. There is no complaint of tenderness upon palpation.

Range of motion is flexion at 130 degrees (130 degrees normal) and extension at 0 degrees (0 degrees normal).

- Lachman test – negative.
- Apley – negative
- Stable on varus/valgus – yes.
- Patella tracking – negative.
- McMurray test – negative.

Note: There is 1 inch x 1 inch area of dark skin discoloration in the lateral proximal tear.

Right Ankle/Foot: There is no heat, swelling, effusion, erythema, or crepitus appreciated. There is no evidence of atrophy.

Range of motion is dorsiflexion at 20 degrees (20 degrees normal), plantar flexion at 40 degrees (40 degrees normal), sub inversion at 30 degrees (30 degrees normal), and sub eversion at 20 degrees (20 degrees normal). There is no instability. There is complaint of tenderness over the medial supramalleolar region.

- Drawer's – negative.

Left Ankle/Foot: There is no heat, swelling, effusion, erythema, or crepitus appreciated. There is no evidence of atrophy.

Range of motion is dorsiflexion at 20 degrees (20 degrees normal), plantar flexion at 40 degrees (40 degrees normal), sub inversion at 30 degrees (30 degrees normal), and sub eversion at 20 degrees (20 degrees normal). There is no instability.

- Drawer's – negative.

DIAGNOSES:

1. Normal examination of the cervical spine
2. Normal examination of the left shoulder
3. Normal examination of the right knee
4. Status post questionable right ankle fracture

Note: I reviewed the bill of particulars. It mentions an ankle bimalleolar fracture, torn right knee medial meniscus, and left shoulder rotator cuff tear,

yet examination is surprisingly benign and negative. I strongly urge MRI's be independently reviewed.

PHYSICAL CAPABILITIES:

There is no evidence of a permanent disability. Mr. Pierre is capable of working without limitations. He is able to perform activities of daily living without restrictions.

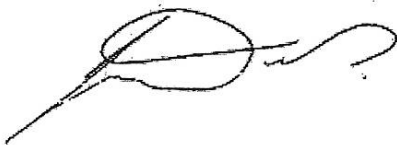
If you have any further questions regarding Mr. Pierre, please do not hesitate to contact me.

Note: I reviewed the bill of particulars. It mentions an ankle bimalleolar fracture, torn right knee medial meniscus, and left shoulder rotator cuff tear, yet examination is surprisingly benign and negative. I strongly urge MRI's be independently reviewed.

ATTESTATION:

I, Julio V. Westerband, M.D., FACS, FAAOS, being an orthopedic surgeon, duly licensed to practice medicine in the state of NY, am not a party to this lawsuit, pursuant to the applicable provisions of the Civil Practice Law and Rules, hereby affirm under the penalties of perjury that the statements contained herein are true and accurate.

Sincerely,



Julio V. Westerband, M.D., FACS, FAAOS
Board Certified Orthopedic Surgeon
License No: 213270

JW/OKS/CP/kh



Hospital, San Juan, Puerto Rico, 1979-1988
 Chief of Orthopedic Surgery, Ashford Presbyterian Community
 Hospital, San Juan, Puerto Rico, 1985-1988
 Private practice, Los Angeles, California, 1990
 Private practice, Orange County, California, 1991-1997
 Private practice, Orange County, California, Bristol Medical
 Clinic, Inc., 1998-Present
 Private practice, New York City, The Bronx, 1999-2000
 Private practice, Orange County, California, Center for Better
 Health, 1998-2000.

**HOSPITAL
 PRIVILEGES:**

Active Medical Staff, Irvine Medical Center, Irvine, California
 1992-1994
 Active Medical Staff, Anaheim Memorial Hospital, Anaheim,
 California, 1993-1994
 Active Medical Staff, Chapman Hospital, Orange, California,
 1994-1995

MEMBERSHIP:

American Academy of Orthopedic Surgeons, 1998
 American College of Surgeons, 1983
 President, Puerto Rico Chapter, Latin American Society of
 Orthopedics and Traumatology, 1985-1986
 Present, Orthopedic Section, Puerto Rico Medical Association,
 1985-1986

**MEDICAL
 LICENSURE:**

Puerto Rico, 1976. License Number 4760
 California, 1989. License Number A046516
 Florida, 1990. License Number ME0057849
 New York 1999. License Number 213270
 New Jersey 1999. License Number 69655

**ADDITIONAL
 PROFESSIONAL
 QUALIFICATIONS:**

Trauma with emphasis on acetabulum and pelvis surgery.
 Total joint replacement.
 Arthroscopic surgery of the peripheral joints.
 Chemoneurolysis for lumbar disc herniations.
 Foot surgery.
 Medical-legal evaluations and reports with trial experience.
 Treatment of personal injury and Worker's Compensation
 injuries.
 QMB for the state of California since 1990
 Extensive AME experiences with multiple insurance carriers
 and lawyers.