

WASHINGTON CASE UPDATE

When are Pre-existing Conditions Admissible?

From the Desk of Kyle D. Riley: Under Washington law, an asymptomatic preexisting condition is generally not admissible in court. Whether a condition is actually asymptomatic, however, can be disputed. Read on to see how the appellate courts may handle such a dispute.

Claims Pointer: In this case arising out of a car accident, the Washington Court of Appeals affirmed a trial court's partial denial of the plaintiff's motion in limine seeking to exclude evidence of a prior injury. The case provides valuable insight into the appellate approach to a dispute regarding medical evidence.

Cutone v. Law, No. 73926-3-I, Washington Court of Appeals, Div. I (September 6, 2016) (unpublished)

Anne Cutone ("Cutone") and Wai Law ("Law") were involved in a car accident, after which Law admitted he was negligent. Despite that admission, the parties could not agree on causation and damages, and they proceeded to trial.

Cutone claimed that the accident gave her thoracic outlet syndrome. Law disagreed, arguing that Cutone's complaints were actually caused by a prior injury and not the car accident. Cutone moved in limine to exclude evidence of her prior injuries. The trial court denied the motion in part and allowed Law to question expert witnesses about whether prior injuries could have caused Cutone's claimed injuries. However, the trial court specifically prohibited Law from mentioning that a prior car accident caused the prior injury.

During trial, Cutone's treating physicians concluded that the car accident caused her claimed thoracic outlet syndrome. Law's medical expert, who performed a court-ordered medical examination of Cutone prior to trial, testified that she did not sustain thoracic outlet syndrome or any other injuries from the car accident. The jury found for Cutone and awarded her \$5,480 for past economic and noneconomic damages. Cutone appealed.

On appeal, Cutone argued that the trial court abused its discretion by partially denying her motion in limine to exclude evidence of the

prior injury. In Washington, a preexisting condition that is dormant and asymptomatic at the time of an accident is not considered a proximate cause of the resulting damages and is therefore irrelevant to proximate cause and damages. However, if there is medical evidence that the preexisting condition was neither dormant nor asymptomatic at the time of the accident, then the evidence is relevant and admissible at trial.

As mentioned above, Law's medical expert examined Cutone. He testified that Cutone sustained a fractured clavicle in the prior accident, which resulted in a structural change and fracture calcification. He explained that this condition, combined with an increase in plaintiff's weight, was more probably than not the cause of Cutone's alleged thoracic outlet syndrome symptoms. He further opined that given Cutone's long-standing and chronic complaints of neck and back pain, it was more probable than not that she continued to suffer from symptomatic conditions prior to the subject on a more probable than not basis.

The Court of Appeals determined that the medical expert's opinion was sufficient to show that Cutone's condition was neither dormant nor asymptomatic and therefore relevant to the question of proximate cause as it was presented to the court at the time of the motion in limine. Notably, the trial court's ruling was nuanced, as it allowed questioning as to whether a broken clavicle could cause Cutone's claimed injuries, but it disallowed any mention of the fact that a prior car accident caused the prior injury. The Court of Appeals held that the trial court did not

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abuse its discretion, and the judgment on the jury verdict was affirmed.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

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