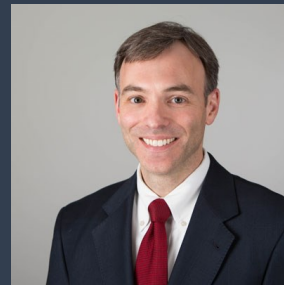




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New Jersey Supreme Court Holds Defense Neurologist is Entitled to Testify About Symptom Magnification and Somatization, Overruling Appellate Division’s Bright-Line Rule Against the Admission of Such Testimony

In *Rodriguez v. Walmart*, _____ N.J. _____ (2019), the New Jersey Supreme Court held that a neurologist called as a defense witness was entitled to testify about symptom magnification and somatization as possible explanations for the inconsistencies between the objective medical evidence and the plaintiff’s subjective complaints of pain.

In doing so, the Supreme Court overturned an Appellate Division ruling that created a bright-line rule prohibiting such testimony by a neurologist. The Appellate Division had ruled that a neurologist is not qualified to give such testimony and that testimony from a physician that a plaintiff is a malingerer or symptom magnifier improperly impeaches the plaintiff’s credibility.

The Court held that the admission of this type of testimony must be decided on a case-by-case basis. The Court noted that in the case before it, the subject was first brought up by the plaintiff’s medical expert, and that the plaintiff’s diagnosis of complex regional pain syndrome was made based on the exclusion of all other causes. Therefore, testimony regarding symptom magnification and somatization was particularly relevant.

Finally, the Court held that testimony regarding “malingering” raises heightened concerns because it may implicate plaintiff’s credibility. Use of that term by a medical expert must be carefully scrutinized by the trial court. The Court also held that the defense was entitled to point out plaintiff’s past medical history and ongoing mental health issues as contributing causes to her diagnosis.

Although this ruling is favorable to the defense, it leaves the admissibility of this type of evidence to the discretion of the trial court on a case-by-case basis. Defendants must be prepared to satisfy the trial court that testimony regarding symptom magnification, somatization, and malingering is relevant to the plaintiff’s alleged injuries, and that its probative value exceeds the risk of undue prejudice to the plaintiff.

If you have any questions about this case, please do not hesitate to call Jim Lisovicz or Tim Smith.

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