

LITIGATING TRAUMATIC BRAIN INJURY CASES

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I. Introduction

“Traumatic brain injury” (TBI) has long been an important public health concern. In the last few years, however, there has been ever-increasing public awareness of the devastating effects of even “mild” traumatic brain injury. TBI has been called the “signature injury” of the wars in Afghanistan and Iraq. Many of our U.S. troops who have experienced concussive force blast injuries have developed symptoms attributable to TBI. In many of these cases, no outwardly visible signs of head or brain injury were detected. As a result, the Federal Government has poured a significant amount of funding into research concerning traumatic brain injury, and in particular mild traumatic brain injury.

Because the problems that result from TBI, such as those of thinking and memory, are often not visible, and because limited awareness about TBI among the general public, *mild* traumatic brain injuries have been referred to as the “silent epidemic.”¹ The CDC report underscores that, among the general public, there has long been a lack of awareness about the potential significance of even mild brain injuries. That is changing now, however, due to the increased attention given to the prevention and management of sports concussions, as well as the focus on concussive force blast injuries sustained by U.S. troops during the wars in Iraq and Afghanistan.

On August 29, 2013, the National Football League announced that it reached a \$765 million settlement over concussion-related brain injuries among its retired players, agreeing to compensate victims, pay for medical exams and underwrite research. More than 4,500 former athletes – some suffering from dementia, depression or Alzheimer’s Disease that they blamed on blows to the head – had sued the League, accusing it of concealing the dangers of concussions and failing to adequately protect the players.

On September 23, 2013, the U.S. Department of Defense issued a special report on traumatic brain injury, calling TBI “one of the invisible wounds of

war,” and urging the expansion of TBI benefits for veterans, and continued funding of research.

The increase in public awareness of TBI will likely lead to an increase in legal claims alleging traumatic brain injury. Lawyers, clients, and family members of a head injury victim are increasingly likely to recognize behavioral changes as possibly being related to a mild traumatic brain injury. The result is that there will be an increase in lawsuits where TBI issues will be litigated. Accordingly, it is important for any lawyer regularly handling auto or trucking cases to be familiar with the basics of traumatic brain injury.

It is estimated that there are 1.7 million hospital visits per year related to traumatic brain injury. Over 80 percent of those patients are treated and released from the emergency department within 24 hours. The vast majority of those are commonly referred to as mild TBI (mTBI), or concussion injuries.

Leading causes of TBI include falls, motor vehicle accidents, getting struck by an object, assaults, and in the active duty military population, blast injuries.

II. Defining Traumatic Brain Injury

Traumatic brain injury occurs when an external mechanical force causes brain dysfunction. TBI usually results from a violent blow or jolt to the head or body. TBI is usually classified as mild, moderate, or severe, depending upon the injury characteristics.

A. Glasgow Coma Scale

In the acute trauma phase, the Glasgow Coma Scale, or GCS, is frequently used. GCS is a neurological scale that is used to assess a person’s level of consciousness after head injury. Unfortunately, lawyers tend to either not understand or intentionally misrepresent what a “normal” GCS means. In the typical mTBI case, for example, the defense might be expected to point out that the plaintiff had a normal GCS when evaluated by EMS or in the emergency department. However, a normal GCS does not equate to the lack of a brain injury.

The GCS scale is used by First Aid, EMS, nurses and doctors in acute medical and trauma patients. The scale is composed of three tests: eye, verbal, and

¹ See the Centers for Disease Control (CDC) report on Traumatic Brain Injury in the United States: Emergency Department Visits, Hospitalizations, and Deaths (Langlois, Rutland–Brown and Thomas 2006, T.3).

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