

## **Debunking Neuropsychological Injury Claims & Litigation**

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Complex injury litigation often involves allegations of organic brain injury secondary to blunt head trauma, hypoxic / anoxic compromise, electric shock or whiplash. The purported foundation for these claims is that a change in the neuro-anatomy, electrophysiology, metabolism or neurochemistry of the brain has occurred. Commonly, the results of diagnostic studies such as MRI, CT or EEG are presented as objective evidence of acute damage. Increasingly, however, plaintiffs are pursuing allegations of brain injury without objective test data or examination findings which correlate with their subjective reports of pathology and dysfunction. Many times these plaintiffs have been evaluated by a neuropsychologist who administered and interpreted a battery of neuro-cognitive and intelligence tests, inventories, and self-report measures.

Brain injury litigation which relies heavily or solely on neuropsychological testimony is often countered by the defendant with contradictory neuropsychological testimony. This approach commonly results in further confusion, not clarity, as neuropsychology can be highly subjective and speculative in forensic cases. While neuropsychological tests can identify areas of neuro-cognitive or other deficit, weakness, or impairment, they cannot establish the etiology of the performance variation. There is no proven objective method to determine whether the data represents acquired neuropsychological impairment or if it represents the effect of other non-organic factors also known to alter neuropsychological performance.

An alternate defense strategy to consider in this situation is to forego cognitive re-testing and to prepare aggressive cross-examination material to discredit the validity of the plaintiff's neuropsychological evidence as it pertains to a proximately caused brain injury with cognitive residua. Commonly, along with cognitive dysfunction, plaintiffs report depression, anxiety, pain, poor sleep, fatigue, and the use of a host of medications, all of which negatively effect test performance and clinical condition.

Additionally, the defendant's neuropsychological expert witness should administer psychological tests, personality inventories, and measures of effort, manipulation, and malingering to underscore the non-organic nature of plaintiff's pathology.

The following guidelines can be used as the foundation to cross-examine the credibility and accuracy of plaintiff's neuropsychological evidence:

- Did the plaintiff's neuropsychologist confirm plaintiff's baseline by reviewing pre-morbid medical, pharmaceutical, psychological, vocational, and academic records? This data is imperative to determine authentic functional changes.
- Did he/she review the medical records from the day of the alleged injury to confirm the type and severity of the initial injuries?
- Did he/she discuss the impact of other non-brain injury factors that may have negatively affected plaintiff's test performance? Medical conditions, psychological overlay, medications, illicit substances, and manipulation all impact test performance.
- Did he/she discuss plaintiff's differential diagnosis using the multi-axial diagnostic system (MADS) to confirm that other influencing factors were considered?

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- How did he/she control for the accepted statistical problems with the neuropsychological tests which limit their reliability and validity?
- Are the neuropsychological interpretations consistent with plaintiff's ability to function in the community setting and with the neurological examination results?

Litigants alleging cognitive and psychological harm often use neuropsychological testimony in an attempt to objectify damages. However, plaintiff's data typically results in a gross over-interpretation and over-statement of accident related pathology. These cases are commonly fueled by clinical confusion, manipulation, and longstanding, underlying psychiatric conditions. Aggressive defense strategies are worth exploration and employment in these high risk cases.

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### **Neuropsychological, Psychiatric and Psychological Injury Analysis**



*"...[Peter] is very active and communicates regularly with both the adjuster and counsel. His direction has helped control indemnity settlements on many high value claims."*  
– Technical Claim Specialist

**Peter R. Reilly** is the President and Director of Injury Analysis for Dynamic Claims Solutions, Inc. Peter reviews medical, psychiatric and legal evidence for insurance claims professionals to clarify damages, scrutinize psychometric and neuropsychological data, and develop negotiation and litigation strategies to resolve cases effectively. Commonly, in cases of brain injury, neuropsychological impairment and / or psychiatric disturbance, Peter develops cross-examination material for defense counsel to aggressively challenge plaintiff's evidence. Peter assesses the technical merits of a case and advises if it is medically defensible or whether settlement should be considered. For additional information Peter can be contacted directly at (386)569.1277, (800)630.8606 or at [PReilly@DynamicClaimsSolutions.com](mailto:PReilly@DynamicClaimsSolutions.com).

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