

Dr. Cameron Bruce Paitich - Orthopaedic Surgery

D.B. and Economical Mutual [+] Arbitration, 2013-10-02

I prefer the testimony and ratings of D.B. provided by Dr. L. Becker to those of Dr. Paitich. Dr. L. Becker's findings were consistent with other reports and were the result of detailed observations. Dr. Paitich made no actual measurements and found that D.B. could stand independently although she had one hand on the examining table for support and was vertical for a very short time. The foundation of Dr. Paitich's WPI rating was flawed in that he refused to assess D.B. as she appeared in his office but instead, persisted in treating her as an amputee, which is not in keeping with the Guides. He compounded his error by not rating D.B.'s chronic neck, shoulders and low back pain, her scarring and skin condition, her hernia and daily use of opioid medications...

...Dr. Paitich calculated SOMA's overall WPI rating for D.B. In Dr. Paitich's opinion, D.B. does not qualify for the catastrophic impairment designation. He assigned her a WPI rating of 35%. Dr. Reznick found no impairment in his mental/behavioural evaluation while Ms. Freedman, the occupational therapist, rated it a mild impairment. Dr. Paitich determined 10% based on the report of Ms. Freedman, the occupational therapist. By choosing 10%, he appeared to have rejected his own psychiatrist's opinion about D.B.'s impairments. Dr. Paitich disagreed and testified that 10% was a compromise between the two findings.

...Dr. Paitich applied no objective tests to rate D.B.'s mobility. He accepted that she used a walker indoors but he never asked her how far she used it. Ms. Freedman, the occupational therapist, was far more specific in her examination and noted D.B.'s inability to adopt a single leg stance, tandem gait, and her inability to stand independently. D.B. was not asked by Dr. Paitich about the walker and there was no demonstration by D.B. of her mobility using a single point cane. Instead, Dr. Paitich chose to treat D.B. as analogous to an amputee with a 28% WPI rating. There also was no acknowledgement of D.B.'s functional limitations in her knees, neck, shoulders and back which should have been rated. However, the Guides speak to evaluating impairment of different body systems by rating the scores for each system independently.^[25]...

...Dr. Harold Becker has also answered the unspoken question as to why Omega devoted so much care to assessing and calculating D.B.'s discrete impairments if the ultimate conclusion is that she is wheelchair dependent. The answer is that the constellation of D.B.'s impairments, both physical and mental/behavioural, created a perfect storm of impairment which resulted in her wheelchair dependency. For that reason, each of her discrete impairments must be evaluated and appreciated. I do not agree with Economical's position that D.B. must be either paraplegic or quadriplegic to qualify as wheelchair dependent. No such requirement can be found in the Guides...

...It is understandable that D.B. is reluctant to consent to a lower limb amputation when she is uncertain about the result. I attach no weight to the WPI rating assigned by SOMA, which was based on an amputation D.B. has not had. Dr. Paitich also insisted that D.B. could walk with a single point cane and an air cast but I was presented with no evidence to support that assertion.

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Fulcher v. Conklin, 2013 ONSC 2013 (CanLII) — 2013-04-08

[101] Counsel for the Defendant relied on the evidence of Dr. Paitich [a specialist in orthopaedic surgery with a sub-speciality in the spine, who saw Fulcher on December 16, 2010 at the request of counsel for the defence] in chief that the accident did not cause Fulcher's disc herniation.] He opined that rear-end collisions cause extension, not flexion, injuries. Flexion injuries, not extension injuries, cause disc herniations. Fulcher did not have a flexion injury here because his car was hit from behind.

[102] Counsel for the Plaintiff relied on the evidence of Dr. Newell that motion studies have demonstrated that in rear-end collisions, bodies are thrown forward and backward, not just once but many times. His clinical experience over the years has been that patients have sustained lumbar disc injuries in rear-end collisions.

[103] I note that Dr. Paitich conceded in cross-examination that whiplash injuries are generally characterized as flexion/extension injuries. In a rear-end collision, a body is pushed backward causing extension [i.e., the neck and back move back, then the head goes forward causing flexion.] Dr. Paitich agreed that in the accident, Fulcher's lumbar spine likely extended, then flexed.

[119] Dr. Paitich said he found no evidence of spasm on examination. He opined that Fulcher was "faking"/exaggerating his physical symptoms. He based his opinion in part on Fulcher's report of discomfort on simulated rotation. He said that patients who can raise their legs 90° when seated should be able to raise them 80-90° when supine. When seated, Fulcher could straight-leg raise 90°, but when lying down claimed to be able to raise them only 45°. This was an "inconsistency." When Fulcher was sitting up, he could rotate his head to the left and right 43°. However, when he was lying down, he could rotate his head 60° to the right. Dr. Paitich said this was another "inconsistency."

Conclusions re Disputed Facts re Causation

General Observations re Medical Evidence on Cause of Fulcher's Physical Impairments

[143] On the matter of causation, I have considered the evidence of Drs. Paitich, Newell, Clements, Shiffer and Mailis.

[144] Dr. Paitich's evidence differed in important respects from the evidence of the other medical witnesses.

[145] Dr. Paitich's evidence that he found no evidence of spasm (an objective finding) was inconsistent with the findings of Dr. Newell, also an orthopaedic surgeon, and Drs. Green, Mailis, and Clement, who all observed and noted spasm. Dr. Paitich conceded in cross-examination that if other orthopaedic surgeons found spasms, he would accept that finding.

[146] Dr. Paitich [who is not a neurologist] based his opinion in part on no change in Fulcher's neurological condition between July 2003 and January 2004. Dr. Paitich said he did not know whether Dr. Shiffer had concluded that Fulcher's neurological condition had deteriorated after the accident. He seems to have assumed that Fulcher's level of neurological functioning before and after the accident was about the same.

[147] Counsel for the Defendant emphasized Dr. Paitich's evidence to the effect that the mere fact that Fulcher had complaints of increased back pain didn't necessarily translate into neurological findings.

[148] I have quoted the evidence of Dr. Shiffer [who is a neurologist] that his neurological condition had in fact deteriorated.

[149] Dr. Paitich assumed that in July 2003, Dr. Shiffer found pain of sufficient severity to warrant the ordering of a CT scan. I have already noted that it was not Dr. Shiffer who ordered the CT scan, but Dr. Green. [He had ordered it in May of 2003, at a time when Fulcher said he was having more severe problems than he was reporting to Dr. Shiffer in July.]

[150] During his cross-examination, Dr. Paitich and counsel for the Plaintiff engaged in some verbal sparring about "sciatica." Used in its technical sense, Dr. Paitich acknowledged that "sciatica" is a neurological finding, not just a finding of pain. He agreed that if Fulcher had true sciatica [involving nerve compression] after the martial arts incident, that had largely resolved before the accident but returned after, that would be important.

[151] Dr. Paitich did not bring his whole file with him when he attended to give evidence at trial. He didn't bring the binders [including the radiological brief, a neurological report of Dr. Shiffer, the clinical and operative reports of Dr. Schutz, the report of Dr. Clements he reviewed before he prepared his opinion. Prior to giving evidence, he did not review much of the documentation that had provided the basis for his conclusions. In cross-examination, he said that he reviewed only his own Report and Addendum Report, the MRI and the CT scan reports.

[152] Dr. Paitich did not personally review the image of the May 30, 2003 CT scan. He didn't review the digital images of the MRI. He agreed a CT scan and MRI scan are not directly comparable.

[153] In reaching his conclusions on causation, Dr. Paitich said he had no information about the speed of the Conklin and Fulcher vehicles at impact [Conklin 35-40 kpm; Fulcher stopped] or the damage to the Conklin vehicle [\$13,663.66.]

[154] Although most of the other medical witnesses including Dr. Travis noted that Fulcher demonstrated observable pain behaviours during their examinations and stood during portions of the examination, Dr. Paitich maintained that he sat for a full 50 minutes without displaying any evidence of sitting intolerance.

[157] I prefer the neurological evidence of Dr. Shiffer and the evidence of Drs. Mailis and Newell (like Dr. Paitich, an orthopaedic specialist) that Fulcher had a vulnerable back and that the accident materially contributed to the worsening of his symptoms, to the evidence of Dr. Paitich. I reject Dr. Paitich's evidence that the accident did not cause Fulcher's ongoing back pain. Dr. Newell noted Fulcher's improvement in the interim between July 2003 and September 2003. Dr. Paitich knew little about that. While Dr. Paitich emphasized that Fulcher's July 2003 condition warranted surgery, Dr. Shiffer obviously disagreed, as she did not refer him to Dr. Shutz in July. Dr. Shiffer gave evidence that in July 2003, she recommended conservative treatment because she believed his injuries could resolve without surgery.

[158] Dr. Paitich assumed Fulcher's neurological condition did not change between July 2003 and October 2003. On neurological matters, I prefer the evidence of Dr. Shiffer, a neurologist, to the evidence of Dr. Paitich, an orthopaedic surgeon. I accept Dr. Shiffer's evidence that Fulcher's neurological signs were worse in October [after the accident] than they had been in July 2003.

[159] I accept Fulcher's evidence that his pain was much worse immediately after the accident. I reject Dr. Paitich's evidence that surgery would have been necessary in January 2004 whether or not the accident had occurred. Dr. Paitich had little information about the relative severity of Fulcher's complaints and symptoms after the martial arts injury in November of 2002 and after the accident. I prefer the evidence of Drs. Mailis, Newell, Clements and Shiffer that the accident precipitated the surgery.

Mann and Allstate Insurance

Allstate's evidence

Allstate rejected the treatment plans and arranged an insurer's examination by Dr. C. B. Paitich, orthopaedic surgeon. On December 17, 2001, Dr. Paitich reported that Mrs. Mann complained of neck pain and left sided leg pain, that she was unable to or needed to make adjustments in order to vacuum, clean a bathroom, do laundry, sweep a floor, make a bed or wash the dishes.

In Dr. Paitich's opinion, Mrs. Mann had evidence of impairment with respect to the range of motion of her lumbar and cervical vertebrae. In his opinion, Mrs. Mann's treatment was inappropriate because of the number of passive modalities. In his opinion, between 12 and 18 treatments would have been necessary over the course of six weeks. Dr. Paitich recommended that the treatment facility provide Mrs. Mann with pictographs of her exercise program to help her remember the exercises, and that she perform a self-directed program to manage her pain.

The DAC assessment

Allstate arranged for an assessment by a medical and rehabilitation DAC to obtain an opinion as to whether the treatment plans were reasonable and necessary. The DAC assessors were a chiropractor, Dr. D. Dos Santos; a physiotherapist, Ms. D. McKeown; and a massage therapist, Ms. A. Ruebottom. In the opinion of the DAC assessors, the cost of the rehabilitation program and some of the passive treatment was reasonable; however, the fees for each chiropractic and massage treatment were unreasonable.

Although I do not accept it in its entirety, I generally prefer the opinion offered by the medical and rehabilitation DAC assessors, based on the more detailed assessment of each modality of treatment, to the opinion offered by the Applicant's chiropractors at Center City Health and by Dr. Paitich.

Ms. Y and State Farm

Dr. C.B. Paitich, an orthopaedic surgeon, assessed Ms. Y at State Farm's request. In a report dated December 4, 2000, he concluded that Ms. Y did not suffer a substantial inability to perform the essential tasks of her pre-accident caregiving and housekeeping duties.

I reject the opinions expressed by the Insurer's assessors because none of them state their understanding or assumptions of what caregiving, housekeeping and home maintenance in Ms. Y's household entailed. Further, none of the Insurer's assessments respond to Ms. Y's diagnosis of fibromyalgia.

Insurer's evidence

State Farm refused the treatment based on Dr. C.B. Paitich's orthopaedic examination of December 4, 2000. In that report, prepared approximately four months before the date of the treatment plan in dispute, Dr. Paitich opined that Ms. Y required no further physical treatment.

Findings and Conclusions

Dr. Paitich's report predates the re-injury of her neck while carrying groceries, and could not therefore have considered the exacerbation of her pain. I reject the notion that benefits can be denied in advance of a claim for those benefits, for the reasons given in the case of *Ross and TTC Insurance Company Limited* (FSCO A01-000064, April 5, 2002).

Kulasekarampillai and State Farm

Merits of the case:

The first issue in determining whether a person is entitled to income replacement benefits is to determine what work they did at the time of the accident. On the evidence I received, I find it likely that Mr. Kulasekarampillai did physical labour. However, it is not clear how many hours he worked per week. He deposed that in the weeks prior to the motor vehicle accident he had worked for two employers; five weeks for S & R Moving and Delivery Service Limited as a mover doing residential moving and delivery of telecommunications equipment, and two weeks for TIPS Temporary Help Inc. as a general labourer. He deposed that he worked for S & R 40 to 50 hours per week and for TIPS 36 hours per week for each of the two weeks. This totals 76 to 86 hours per week of work. However, Dr. Kirwin, a physiatrist who assessed Mr.

Kulasekarampillai on his behalf, thought that Mr. Kulasekarampillai worked 20 hours a week as a mover and 30 hours a week as a courier for a telecommunications company. Dr. Paitich, an orthopaedic specialist who examined Mr. Kulasekarampillai on behalf of the Insurer, thought Mr. Kulasekarampillai's work for S & R comprised 20 hours per week doing residential moving and 20 to 30 hours per week delivering telecommunications equipment. Neither Dr. Kirwin nor Dr. Paitich expressed any knowledge of the work with TIPS and the extensive number of hours Mr. Kulasekarampillai worked in the weeks before the accident.

Mr. Kulasekarampillai deposed that Dr. Paitich's failure to make any reference to his employment at TIPS might have been due to the fact that he attended without an interpreter. If I accept that Dr. Paitich did not fully understand Mr. Kulasekarampillai because of the need for interpretation, the question is raised whether any of the assessors clearly understood Mr. Kulasekarampillai. Dr. Kirwin did not make any reference to the employment with TIPS. I have in evidence records and reports from ten health care professionals who examined or assessed Mr. Kulasekarampillai. I could find no evidence that any of them used an interpreter. The only comment on Mr. Kulasekarampillai's ability to communicate in English was that of an occupational therapist who reported that Mr. Kulasekarampillai's "English was functional."

....Mr. Wilson argued that Dr. Paitich's opinion that Mr. Kulasekarampillai was not disabled was unreliable. The issue for determination is not whether the insurer had grounds to terminate

benefits. The issue is whether the insured has made out his case. If it is determined that Mr. Kulasekarampillai is entitled to benefits, and Dr. Paitich's opinion was not reliable, such a finding may be relevant to the issue of whether State Farm unreasonably terminated benefits and is liable to a special award. The same applies for Mr. Wilson's argument that State Farm did not arrange a psychological assessment.

[Pinhasov, D. and Guarantee](#) / [Pinhasov, D. and Guarantee - Appeal](#)

Dr. C.B. Paitich examined Mr. Pinhasov at Guarantee's request, five months after he was assessed by Dr. Alpert and concluded that Mr. Pinhasov had no physical limitations arising from his accident-related injuries. Dr. Paitich testified that on physical examination Mr. Pinhasov described symptoms from the shoulder to the T-12 level, and symptoms of numbness on the whole posterior aspect of back that were not consistent with the MRI findings. Dr. Paitich testified that Mr. Pinhasov claimed he felt numbness, but he did not pass the pin-prick and light-touch tests. It appears that Dr. Paitich questioned the veracity of Mr. Pinhasov's claims, although he did not say as much in his testimony or report.

Although he did not refer to it in his report, Dr. Paitich testified that, in his view, the MRI scan of Mr. Pinhasov's cervical spine shows multi-level degenerative changes and central disc herniations, with no evidence of nerve compression.

Dr. Paitich concluded that the thoracic disc herniation was not causing Mr. Pinhasov's complaint of back pain, and that his injuries are restricted to the soft tissues of the neck and back. Dr. Paitich testified that the tendency of a disc herniation injury is complete resolution within six months, for 90 percent of the cases. He stated the other 10 percent will go on to develop chronic pain; however, he conceded that he had no way of knowing under which category Mr. Pinhasov fell and why.

In addition, Dr. Paitich stated that Mr. Pinhasov's complaint of back pain at the thoracic level began more than one month after the accident and therefore his back pain is not causally related to his motor vehicle accident. However, he conceded that, if Mr. Pinhasov reported the problem within days after the accident, he would find that the accident was the cause of the impairment. Dr. Paitich is the only physician who suggests that the thoracic herniation was not caused by the accident.

I do not accept Dr. Paitich's opinion that Mr. Pinhasov's thoracic disc injury was not caused by the accident. Mr. Pinhasov testified and Dr. Pliamm's reports indicate that Mr. Pinhasov complained about pain in his thoracic area as early as January 9, 1996, four days after the accident. There is no evidence to suggest that he had this condition prior to the accident.

Dr. Paitich also doubted if Mr. Pinhasov's thoracic disc herniation was caused by the accident because "disc herniation at T8-9 is not an unusual finding since the condition is present in 30 percent of the population without producing any symptoms." I do not accept Dr. Paitich's conclusion because he was unable to explain why Mr. Pinhasov would fall in that category. In addition, his position is inconsistent with the medical consensus that an asymptomatic herniation could become symptomatic after a traumatic event as a car accident. He did not explain why this could not have been the case in Mr. Pinhasov's situation.

Dr. M. Rathbone examined Mr. Pinhasov on May 19, 2000, a few days before he was seen by

Dr. Paitich. Mr. Pinhasov related the same complaints to Dr. Rathbone that he did to Dr. Paitich. Dr. Rathbone supported Mr. Pinhasov's claim of pain and disability.

[Spittal v. Thomas](#),

[15] Dr. Paitich thought that Krystle had a minor whiplash injury that should have repaired in a few weeks. He did not think there was a serious and permanent impairment of an important physical function.

[23] Krystle was seen by Dr. Paitich. He concluded that she had a minor whiplash injury that should have resolved within a few weeks. His opinion is that Krystle is not experiencing a serious and permanent impairment of a serious physical function. Basically, Dr. Paitich concluded that Krystle has inflated discomfort for the sake of her court action. Every ache or pain does not become a serious permanent injury to an important bodily function.

[Compierchio Jones v. Guido Mazolla](#)

[28] Dr. Cameron Paitich, an orthopedic surgeon, examined Ms. Jones in May 1997 on referral from the insurance company. Ms. Jones reported neck and lower back pain, stiffness in her back, swelling in her hands and feet. Dr. Paitich did not have a note concerning headaches. He indicated that he would have asked Ms. Jones about it and had she indicated headaches, he would have noted it. Ms. Jones said she was able to accomplish tasks with discomfort except for shoveling and taking out the garbage, which she is unable to do. Dr. Paitich concluded that she had experienced a soft-tissue injury as a result of her body moving forward or backward after a sudden stop. These kinds of injuries have a 50% probability of complete resolution within 6 weeks and a 90% probability of resolution after 6 months. Dr. Paitich saw Ms. Jones approximately 6 months after the accident. He felt that Ms. Jones was a genuine person, with no inconsistencies in what she was reporting. However, he felt that she did not have a disability and her condition would likely improve.

[36] On reviewing the evidence, I am satisfied that Ms. Jones continues to suffer neck and back pain, headaches and sleeplessness arising from her accident. Although Dr. Paitich and Dr. Lipson were of the view that she does not suffer a disability, Ms. Jones' evidence and that of the other witnesses, both medical and non-medical, point to significant problems that have been ongoing since the accident. The absence of objective physical indicia of her pain is not unusual in injuries of this type. Dr. Paitich saw Ms. Jones just six months after the accident.