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Gallagher Sharp Shop Talk: Workers' Compensation

The Tenth District Court of Appeals recently issued an opinion in *Holman v. Shiloh Grove Ltd. Partnership*, 2016-Ohio-2809, a case involving several evidentiary issues relating to expert testimony. Because this opinion touches on multiple issues involving expert opinion testimony, I would like consider this case in depth this week.

Holman began with a neck injury that occurred on January 30, 2009, when the claimant was struck by ice or snow from a rooftop. A workers' compensation claim was filed, which was allowed for "contusion scalp, contusion neck, cervical strain/sprain," but denied for several conditions arising from a "substantial aggravation" of pre-existing disc herniations. The claimant appealed these denials to court, and attempted to introduce testimony of a high school physics teacher regarding the impact. The Administrator sought to exclude this testimony pursuant to Evid. R. 702 and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). A hearing was held and the evidence was excluded. After the case was dismissed without prejudice and refiled, the Administrator sought to introduce at trial expert testimony from three (3) medical doctors, two of whom separately examined the claimant, that the conditions were not related. Because the doctors essentially shared the same medical opinion, the claimant sought to exclude one or more experts' testimony as "cumulative" pursuant to Evid. R. 403(B), a motion which was denied by the trial court. Finally, the claimant moved to exclude the testimony of two of the physicians because they each admitted during their trial depositions that they had reviewed reports from other doctors which were not admitted into evidence at trial. The trial court denied all of these motions, and a jury found in favor of the BWC. The claimant then pursued an appeal as of right to the Tenth Appellate District.

The Tenth District affirmed the trial court's evidentiary rulings, and therefore affirmed the verdict. With regard to the alleged "cumulative" reports, the Court acknowledged that Evid. R. 403(B) does seek to exclude the "needless presentation of cumulative evidence," but provides the trial court with discretion to admit or exclude it. *Bostic v. Connor*, 37 Ohio St.3d 144(1988). Although all of experts were medical doctors and reached the same conclusions, each doctor physically examined the claimant at different times, and each had a different medical specialty. Therefore, it was not an abuse of discretion to find that the opinions were not cumulative. With regard to whether the opinions should have been excluded because they referenced medical reports which were not admitted into evidence and whose authors did not testify at trial, the Court denied this argument as well. Evid. R. 703 states that experts may base their opinions on evidence "perceived [by the doctor] or admitted into evidence at the hearing." In this case, both doctors testified that they reviewed the reports, but did not indicate that the information contained therein was the basis for their opinions, and in fact did not cite to any findings contained therein. Lastly, the Court found no error in excluding the testimony of a high school physics teacher because the opinions relied upon "facts that were largely speculative." Based upon the information available, the teacher could not provide testimony in a reasonably limited framework from which a scientist could determine the force of the snow or ice that struck the claimant.

Holman provides an excellent review of evidentiary issues that often arise in offering expert testimony in workers' compensation matters, particularly with regard to cumulative evidence. Unfortunately, drawing broad conclusions from the Court's opinion is impossible, as Ohio law provides wide discretion to a trial court as to whether evidence will be admitted. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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