

2012 WL 8435422 (N.Y.Sup.) (Expert Report and Affidavit)
Supreme Court of New York.
Queens County

Eladio HERNANDEZ,
v.
PAPPCO HOLDING CO., LTD. et al.

No. 210632010.
July 19, 2012.

(Report or Affidavit of John Thomas, M.D., F.A.C.S.)

Case Type: Construction & Industrial Accidents >> Equipment
Case Type: Construction & Industrial Accidents >> Fall
Case Type: Labor & Employment >> Work Place Injury
Jurisdiction: Queens County, New York
Name of Expert: John Thomas, M.D., F.A.C.S.
Area of Expertise: Health Care-Physicians & Health Professionals >> Hand Surgeon

Representing: Unknown

JULY 19, 2012

PATIENT: ELADIO HERNANDEZ

DATE OF BIRTH: XX/XX/1958

DATE OF INJURY: 03/26/2010

WCB CASE #: G034 5146

CARRIER: STATE INSURANCE FUND

CARRIER ID #: W204 002

CARRIER CASE ID: 6454 2640-371

EMPLOYER: GULF SALES & SERVICE

EXAMINATION DATE: 05/18/2012

LOCATION: NORTHEAST HAND SPECIALISTS

DEAR SIR OR MADAM:

THE FOLLOWING REPORT IS A DETAILED AND COMPREHENSIVE EXAMINATION OF ELADIO HERNANDEZ TO COMPLETE THE *DOCTOR'S REPORT OF MAXIMUM MEDICAL IMPROVEMENT (MMI)/ PERMANENT IMPAIRMENT* MORE COMMONLY KNOWN AS A FINAL IMPAIRMENT RATING (FIR).

NARRATIVE HISTORY - MR. HERNANDEZ WAS INJURED ON THE 26TH OF MARCH, 2010. HE STATES HE WAS STANDING ON A FORKLIFT TO THROW/SHOVEL DIRT INTO (OR OUT OF) A TRUCK. WHEN THE WORK WAS COMPLETED, THE FORKLIFT WAS BACKING UP AND THE ELEVATED PORTION WAS DESCENDING. MR. HERNANDEZ STATES HE LOST HIS BALANCE AND GRASPED ONTO THE FORKLIFT TO STEADY HIMSELF DAMAGING/CRUSHING HIS LEFT HAND IN THE MECHANISM OF THE FORKLIFT.

HE WAS DRIVEN TO THE EMERGENCY DEPARTMENT (ER) OF A LOCAL HOSPITAL WHERE RADIOGRAPHS WERE OBTAINED, WOUNDS WERE WASHED OUT, SUTURES WERE PLACED AND IMMOBILIZATION WAS PERFORMED. MR. HERNANDEZ STATES HE RETURNED TO THE ER FOR A WOUND CHECK AND WAS THEN REFERRED TO HAND CLINIC.

FORMAL SURGICAL REPAIR OF THE FOLLOWING INJURIES WAS PERFORMED APRIL 1, 2010:

I. EXPLORATION & REPAIR OF LACERATIONS ON THE PALMAR SURFACES OF THE:

A. INDEX

B. MIDDLE

C. RING FINGERS

2. REDUCTION AND PERCUTANEOUS FIXATION OF MIDDLE PHALANGEAL FRACTURES OF THE:

A. INDEX

B. MIDDLE

C. RING FINGERS

IT IS UNCLEAR AS TO HOW LONG THE PERCUTANEOUS PINS REMAINED IN PLACE AS POST OPERATIVE RECORDS WERE NOT AVAILABLE FOR REVIEW. BY HISTORY, MR. HERNANDEZ ATTENDED OCCUPATIONAL/HAND THERAPY FROM APRIL TO DECEMBER OF 2010 PRESUMABLY TO PERFORM RANGE OF MOTION (ROM) EXERCISES, DECREASE EDEMA, ETC., TO MAXIMIZE FUNCTIONAL RECOVERY.

IMPAIRMENT IS CALCULATED ACCORDING THE *GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT*, FIFTH EDITION PUBLISHED BY THE AMERICAN MEDICAL ASSOCIATION. MEASUREMENTS ARE MADE ACCORDING TO THE INSTRUCTIONAL FIGURES PROVIDED THEREIN. IMPAIRMENTS ARE CALCULATED AND ASSIGNED ACCORDING TO THE FIGURES AND TABLES ASSOCIATED WITH THESE FIGURES. APPROPRIATE REFERENCE WILL BE NOTED EACH TIME A MEASUREMENT OR CALCULATION IS MADE FOR THE FIRST TIME BY IDENTIFYING THE FIGURE/TABLE AND THE PAGE NUMBER UPON WHICH IT APPEARS.

PHYSICAL EXAMINATION/IMPAIRMENT CALCULATIONS

I. *INDEX FINGER*

A. DISTAL INTERPHALANGEAL (DIP) JOINT - DIP JOINT ROM IS MEASURED ACCORDING TO FIGURE 16-20 PAGE 461.

I. EXTENSION: -38°

II. FLEXION: 63°

III. IMPAIRMENT IS CALCULATED ACCORDING TO FIGURE 16-21 PAGE 461.

1. EXTENSION: 19%

2. FLEXION: 4%

B. PROXIMAL INTERPHALANGEAL (PIP) JOINT - PIP JOINT ROM IS MEASURED ACCORDING TO FIGURE 16-22 PAGE 463.

I. EXTENSION: +8°

II. FLEXION: 78°

III. IMPAIRMENT IS CALCULATED ACCORDING TO FIGURE 16-23 PAGE 463.

1. EXTENSION: 0%

2. FLEXION: 13%

C. METACARPOPHALANGEAL (MCP) JOINT- MCP JOINT ROM IS MEASURED ACCORDING TO FIGURE 16-24 PAGE 464.

I. EXTENSION: 0°

II. FLEXION: 80°

III. IMPAIRMENT IS CALCULATED ACCORDING TO FIGURE 16-25 PAGE 464.

1. EXTENSION: 5%

2. FLEXION: 6%

D. TWO-POINT DISCRIMINATION - SENSORY QUALITY IMPAIRMENT (SQI) CLASSIFICATION IS DETERMINED ACCORDING TO TABLE 16-5 PAGE 447. THE PURPOSE OF THIS TABLE IS TO QUANTIFY AN OBJECTIVE SENSORY IMPAIRMENT DUE TO DIGITAL NERVE INJURY. BASED UPON THE DESCRIPTION OF MR. HERNANDEZ' INJURY IN THE OPERATING SURGEON'S "OPERATIVE REPORT", THE PATIENT'S LEFT HAND SUFFERED A CRUSH INJURY WHICH LED TO "BURST-TYPE LACERATIONS". DUE TO THE PRESENCE OF SENSORY IMPAIRMENT OVER 2 YEARS BEYOND THE DATE OF INJURY, IT IS REASONABLE TO ASSIGN IMPAIRMENT FOR SENSORY LOSS AS CRUSH INJURIES CAN CAUSE DIGITAL NERVE INJURY. THIS INJURY CAN BE TRANSIENT AT TIMES. IN THIS CASE, IT REMAINS PRESENT.

I. RADIAL: 9 MM-SENSORY LOSS PARTIAL YIELDS 50% SENSORY QUALITY IMPAIRMENT

II. ULNAR: 10 MM-50% SQI

III. IMPAIRMENT IS CALCULATED ACCORDING TO FIGURE 16-7 PAGE 447.

I. *PARTIAL TRANSVERSE SENSORY LOSS* REPRESENTS 50% SENSORY LOSS (7-1 MM) INVOLVING BOTH DIGITAL NERVES AND RECEIVES 25% OF THE DIGIT AMPUTATION IMPAIRMENT VALUE FOR THE CORRESPONDING DIGIT LENGTH PERCENTAGE. IMPAIRMENT IS ASSIGNED DISTAL TO THE PIP JOINT RATHER THAN TO THE ENTIRE DIGIT - 20% IMPAIRMENT OF DIGIT

E. 52% TOTAL INDEX FINGER IMPAIRMENT- VALUES ARE COMBINED NOT ADDED. SEE COMBINED VALUES CHART PAGE 604.

I. ABNORMAL MOTION: 23% DIP AND 13% PIP AND 1 1% MCP = 40% (NOT 47%)

II. SENSORY LOSS: 20%

III. *COMBINED VALUE* OF 40% AND 20% = 52% (NOT 60% WHICH WOULD BE THE TOTAL IF THE NUMBERS WERE ADDED RATHER THAN COMBINED.)

II. *MIDDLE FINGER*

A. DIP JOINT

I. EXTENSION: -12°, IMPAIRMENT 2%

II. FLEXION: 54, IMPAIRMENT 8%

B. PIP JOINT

I. EXTENSION: -30°, IMPAIRMENT 11%

II. FLEXION: 93°, IMPAIRMENT 4%

C. MCP JOINT

I. EXTENSION: 0°, IMPAIRMENT 3%

II. FLEXION: 84°, IMPAIRMENT 3%

D. TWO-POINT DISCRIMINATION

I. RADIAL: 8 MM

II. ULNAR: 10 MM

III. IMPAIRMENT: 20%

E. 44% TOTAL MIDDLE FINGER IMPAIRMENT

I. ABNORMAL MOTION: 10% DIP AND 15% PIP AND 8% MCP = 30% (NOT 33%)

II. SENSORY LOSS: 20%

III. COMBINED VALUE OF 30% AND 20% = 44% (NOT 50%)

III. RING FINGER

A. DIP JOINT

I. EXTENSION: -30°, IMPAIRMENT 12%

II. FLEXION: 42°, IMPAIRMENT 22%

B. PIP JOINT

I. EXTENSION: -18°, IMPAIRMENT 6%

II. FLEXION: 98°, IMPAIRMENT 1%

C. MCP JOINT

I. EXTENSION: +10°, IMPAIRMENT 3%

II. FLEXION: 80°, IMPAIRMENT 6%

D. TWO-POINT DISCRIMINATION

I. RADIAL: 8 MM

II. ULNAR: 8 MM

III. IMPAIRMENT: 20%

E. 55% TOTAL RING FINGER IMPAIRMENT

I. ABNORMAL MOTION: 34% DIP AND 7% PIP AND 9% MCP = 44% (NOT 50%)

II. SENSORY LOSS: 20%

III. COMBINED VALUE OF 44% AND 20% = 55% (NOT 64%)

IV. LITTLE FINGER

A. DIP JOINT

I. EXTENSION: -18°, IMPAIRMENT 4%

II. FLEXION: 78°, IMPAIRMENT 0%

B. PIP JOINT

I. EXTENSION: -10°, IMPAIRMENT 3%

II. FLEXION: 104°, IMPAIRMENT 0%

C. MCP JOINT

I. EXTENSION: +22°, IMPAIRMENT 0%

II. FLEXION: 70°, IMPAIRMENT 11%

D. TWO-POINT DISCRIMINATION

I. RADIAL: 6 MM

II. ULNAR: 6 MM

III. IMPAIRMENT 0%

E. 15% TOTAL LITTLE FINGER IMPAIRMENT

I. ABNORMAL MOTION: 4% DIP AND 3% PIP AND 11% MCP

= 15% (NOT 18%)

II. SENSORY Loss: 0%

V. THUMB

A. INTERPHALANGEAL (IP) JOINT - FIGURE 16-1 0 PAGE 455 AND FIGURE 16-1 2 PAGE 456

I. EXTENSION: +42°, IMPAIRMENT 0%

II. FLEXION: 63°, IMPAIRMENT 1%

B. MCP JOINT - FIGURE 16-1 3 PAGE 456 AND FIGURE 16-15 PAGE 457

I. EXTENSION: -36°, IMPAIRMENT 4% - 1% = 3% DUE TO -18° OF EXTENSION IN THE UNINJURED RIGHT THUMB

II. FLEXION: 56°, IMPAIRMENT 0%

C. CARPOMETACARPAL (C MCP) JOINT

I. OPPOSITION, FIGURE 16-19 AND TABLE 16-9: 6 CM, IMPAIRMENT 3%

II. ADDUCTION, FIGURE 16-17 AND TABLE 16-8: -2.5 CM, IMPAIRMENT 2%

III. ABDUCTION, FIGURE 16-16 AND TABLE 16-8A: 45°, IMPAIRMENT 0%

D. TWO-POINT DISCRIMINATION

I. RADIAL: 5 MM, IMPAIRMENT 0%

II. ULNAR: 6 MM, IMPAIRMENT 0%

E. 9% TOTAL THUMB IMPAIRMENT

I. ABNORMAL MOTION: $1\% + 3\% + 3\% + 2\% = 9\%$ VALUES FOR THE THUMBS ARE ADDED, NOT COMBINED

VI. WRIS -FIGURE 16-28 AND FIGURE 16-28

A. LEFT

I. EXTENSION: 58°, IMPAIRMENT 0%

II. FLEXION: 52°, IMPAIRMENT 1%

III. PRONATION: NO IMPAIRMENT

IV. SUPINATION: NO IMPAIRMENT

V. RADIAL DEVIATION: NO IMPAIRMENT

VI. ULNAR DEVIATION: NO IMPAIRMENT

B. RIGHT (UNINJURED)

I. EXTENSION: 78°

II. FLEXION: 56°

VII. PAIN - NO IMPAIRMENT VALUE ASSIGNED (SEE VIII BELOW).

VIII. STRENGTH - NO IMPAIRMENT VALUE ASSIGNED DUE TO PRESENCE OF MEASURABLE OBJECTIVE ROM AND SENSORY DEFICITS AS DELINEATED ABOVE.

IX. IMPAIRMENT CALCULATION

A. CONVERSION OF IMPAIRMENT OF THE DIGIT TO IMPAIRMENT OF THE HAND - TABLE 16-1

I. 52% INDEX FINGER = 10%

II. 44% MIDDLE FINGER = 9%

III. 55% RING FINGER = 6%

IV. 17% LITTLE FINGER = 2%

V. 9% THUMB = 4%

VI. 31% IMPAIRMENT OF THE HAND

B. CONVERSION OF IMPAIRMENT OF THE HAND TO IMPAIRMENT OF THE UPPER EXTREMITY - TABLE 16-2

I. 31% HAND IMPAIRMENT = 28% UPPER EXTREMITY IMPAIRMENT

C. REGIONAL IMPAIRMENT OF THE UPPER EXTREMITY:

I. 28% HAND + 1% WRIST = 29% UPPER EXTREMITY

D. CONVERSION OF IMPAIRMENT OF THE UPPER EXTREMITY TO IMPAIRMENT OF THE WHOLE PERSON - TABLE 16-3

1. 29% UPPER EXTREMITY = 17% WHOLE PERSON

I INVITE YOU TO CONTACT ME VIA EMAIL SHOULD QUESTIONS OR CONCERNS ARISE BY DIRECTING YOUR INQUIRIES TO: *DRTHOMAS@NORTHEASTHAND.COM*

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2012 WL 8435424 (N.Y.Sup.) (Expert Report and Affidavit)
Supreme Court of New York.
Queens County

Eladio Alonso HERNANDEZ, Plaintiff,

v.

PAPPCO HOLDING CO., LTD, Sai Gas Inc. & Gulf Repair, and Doaba Gas Management, Inc., Defendants.

No. 21063/10.
September 10, 2012.

Affidavit of John Thomas, MD, FACS

Case Type: Construction & Industrial Accidents >> Equipment

Case Type: Construction & Industrial Accidents >> Fall

Case Type: Labor & Employment >> Work Place Injury

Jurisdiction: Queens County, New York

Name of Expert: John Thomas, M.D., F.A.C.S.

Area of Expertise: Health Care-Physicians & Health Professionals >> Hand Surgeon

Representing: Unknown

STATE OF NEW YORK)

COUNTY OF NASSAU)

John Thomas, MD, FACS, being duly sworn, deposes and says the following:

1. I, John Thomas, MD, FACS, am a physician licensed to practice medicine in the State of New York. I specialize in hand surgery and maintain an office Northeast Hand Specialists, LLC., located at 30-16 30th Drive, 3rd Floor, Astoria, New York 11102.
2. I evaluated Eladio Hernandez, the Plaintiff in the above action, on May 18, 2012 at my offices. Attached hereto is a true and accurate narrative report of my examination of Mr. Hernandez dated July 19, 2012.
3. The basis of my opinions and evaluation of Mr. Hernandez includes my evaluation of Mr. Hernandez, surgery performed on Mr. Hernandez, any ongoing care and treatment of Mr. Hernandez, review of any x-rays, MRI's and/or other diagnostic tests done of plaintiff's condition, together with my education, training, experience, and treatment of similar injuries such as those sustained by Mr. Hernandez during the course of my practice of medicine. Additionally, my opinion is based on my review of the prior medical records for the care and treatment of plaintiff, as well as any and all evidence admitted at the time of trial.
4. Based upon my review of medical records and reviews of Mr. Hernandez as well as my evaluation of Mr. Hernandez on May 18, 2012, it is my opinion, based on a reasonable degree of medical certainty that Mr. Hernandez suffered a grave injury as defined by New York Workers' Compensation Law, Article 2, Section 11, whereby Mr. Hernandez sustained significant disfigurement and loss function to multiple fingers which will permanently affect his left, dominant hand.

5. Said injuries to Mr. Hernandez's dominant left hand resulted in 31% total disability impairment to his hand.

6. A copy of this affidavit shall be deemed an original for all purposes.

Sworn to before me this 10 Day of September 2012

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