SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

EBONY STANFORD,

Plaintiff,

-against-

RIDEWAY CORP., WATSON CAR SERVICE INC., and WILLIAMS WOLLARD SANTANA,

Defendants.

AFFIRMATION OF TREATING ORTHOPEDIST

Index No.: 310188/11

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

STANLEY LIEBOWITZ, M.D., a physician duly licensed to practice in the State of New York, affirms the following under the penalties of perjury pursuant to CPLR 2106:

1. That I am licensed to practice medicine within the State of New York, and maintain offices at 110 West 34th Street, Suite 406, New York, New York; 384 East 149th Street, Suite 518, Bronx, New York; 39 East 69th Street, New York, New York and 266 White Plains Road, Eastchester, New York. I submit this affirmation in opposition to the motion by the defendants to dismiss the within action on the grounds that the plaintiff has not sustained a serious injury as defined by §5102(d) of the Insurance Law of the State of New York.

2. I further submit this Affidavit in support of the plaintiff's cross-motion for summary judgment on the issue of whether plaintiff, EBONY STANFORD, sustained a medically determined

injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the subject motor vehicle accident.

3. In fact, upon my office's direction, and the direction of Ms STANFORD's other treating medical providers, Ms. STANFORD remained out of work for the first four and a half months immediately after the accident, from December 18, 2011 through May 1, 2012, a period of 135 days until her condition became bearable enough to return to her job as a special officer at Harlem Hospital. During approximately the first four and a half months after the accident, Ms. STANFORD was unable to engage in her usual and customary activities of daily living as a result of the traumatic injuries sustained to her lumbar and cervical spines in the December 17, 2011 motor vehicle accident because of the substantial and significant pain and stiffness and restricted range of motion in the affected body parts.

4. On January 30, 2012, my office, by Dr. David Capiola, initially examined and treated the plaintiff, EBONY STANFORD, as a result of a motor vehicle accident in which she was involved on December 17, 2011. I am advised that the accident occurred when Ms. STANFORD was a passenger in a taxicab which was struck in the rear while driving at a high rate of speed. Ms. STANFORD reported

that there were two impacts and that they caused her head and neck to slam violently into the back of her seat and headrest.

5. Ms. STANFORD reported that EMS arrived at the scene of the accident and she was thereafter placed in a neck collar, on a backboard and transported to New York Presbyterian Hospital where she was given X-rays, medication, treated and released home. When the pain and stiffness in her lower back worsened over the next ten days she went to New York Medical Rehabilitation located at 384 East 149th Street, Suite 518, Bronx, New York where my colleague, David Capiola and I maintain our offices in connection with that clinic. She was initially seen by the chiropractors and physical therapists at that facility on December 28, 2011. Ms. STANFORD had not returned to her regular employment as of that date and she was advised to not return until her medical condition would allow.

6. Ms. STANFORD was initially advised on a conservative course of physical therapy and chiropractic treatment for her severe lower back and to a lesser extent neck pain, stiffness and lose of range of motion. She was then referred to see a pain management specialist, neurologist and to my office for an orthopedic consultation and was initially seen by my office on January 30, 2012.

7. At the initial examination, Ms. STANFORD apprised us that she had previously had a breast reduction surgery and a history of high cholesterol. She had no prior injuries or accidents which

involved her neck or back. Her chief complaints were of excruciating lower back and severe neck pain and stiffness. She complained that her extremities were weaker since the December 17, 2011 motor vehicle accident. She stated that the pain in her neck and back was constant and that bending and twisting her spine only served to aggravate and exacerbate the substantial pain she was already suffering. She was having difficultly lifting even the smallest objects and using stairs. At the office, she ambulated with a slight antalgic gait.

8. She informed that she had not returned to work and was in fact, incapable of doing nothing more than resting and attending her appointments with her medical providers. Her treating chiropractors had advised that she refrain from work. Our clinical examination on January 30, 2012 confirmed that Ms. STANFORD had a valid explanation for these complaints. She was suffering from a partial significant disability within her cervical and lumbar spine and was unable to engage in her usual and customary activities of daily living since the happening of the accident on December 17, 2011.

9. As set forth below, Ms. STANFORD suffered severe and permanent injuries to her lumbar spine and cervical spine as a result of the subject accident. She continues to suffer from severe pain, stiffness and restriction of motion in her cervical and lumbar spines as a result of this accident. Furthermore, the

results of several objective medical studies detailed below are consistent with a finding that Ms. STANFORD sustained serious and permanent injuries to her lumbar and cervical spine.

10. Upon initial examination on January 30, 2012, Ms. STANFORD's cervical and lumbar spine presented severe bilateral muscle spasm and severe vertebral tenderness throughout both the cervical and lumbar levels. Range of motion in the cervical spine and lumbar spine was measured by using a goniometer. The range is determined by actively moving the affected area by hand to its end range. The end range is measured objectively via detection of myospasm in the specific plane. The subjective pain that a patient feels is not a factor in determining specific planar motion. However, Ms. STANFORD did complain of extreme pain when moving the affected areas to the extreme of motion, which in her case, were dramatically limited, up to one-third. The results were recorded as follows at the initial exam on January 30, 2012:

January 30, 2012 CERVICAL SPINE EXAMINATION FINDINGS			
RANGE OF MOTION	NORMAL	FINDINGS	LOSS
FLEXION	60	50	17%
EXTENSION	60	50	17%
LEFT ROTATION	75	70	7%
RIGHT ROTATION	75	70	7%
L. LATERAL FLEXION	30	20	33%
R. LATERAL FLEXION	30	20	33%

January 30, 2012 LUMBAR SPINE EXAMINATION FINDINGS			
RANGE OF MOTION	NORMAL	FINDINGS	LOSS
FLEXION	85	60	29%
EXTENSION	30	20	33%
L. LATERAL BENDING	25	20	20%
R. LATERAL BENDING	25	20	20%
L. LATERAL ROTATION	40	30	25%
R. LATERAL ROTATION	40	30	25%

11. In addition, straight leg testing was positive at 45 degrees of normal on the right. Ms. STANFORD was able to do the heel-toe walk, but with back and leg pain.

12. EMG/NCS studies performed by Neurologist, Ranga Krishna, which I am advised have been offered by the defendant in their motion, and thus can be commented on, showed right C5/6 cervical radiculopathy as well as mild bilateral sensory median nerve neuropathy at the wrist, consistent with carpel tunnel syndrome. Radiculopathy is a term that describes damage to spinal nerve roots. The condition is usually a result of nerve root compression, which occurs when something puts pressure on the nerve root. Most commonly, this pressure is caused by a traumatically-herniated disc or bulging disc and can also be due to nerve root irritation which is traumatically induced. Common symptoms of radiculopathy include shooting pain, headaches, weakness, numbness, stiffness, restriction of motion and impaired reflex.

14. Ms. STANFORD had been referred for MRI studies of her

cervical and lumbar spine I received copies of the subject MRI reports in the regular course of my practice and I rely on these reports in diagnosing and treating my patients. I am advised that the January 24, 2012 MRI reports of the cervical spine and lumbar spine have been authenticated by Dr. Jacob Lichy, the reporting radiologist. In addition, I personally reviewed the MRI films taken on January 24, 2012 as I have training and experience in the same. I regularly review MRI films of my patients when made available.

19. The MRI report of the cervical spine revealed the following: a straightening of the cervical lordosis, consistent with pain or muscle spasm.[1]

20. The MRI report of the lumbar spine revealed the following: a bulging disc at the L3/4 level and a bulging disc at the L4/5 level.[2] I am aware that the radiologist hired by the

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[1] The traumatically induced injuries to Ms. STANFORD's neck, as confirmed by the objective MRI reports and EMG/NCS results, have created a straightening of the natural curvature of Ms. STANFORD's cervical spine. Both the cervical and lumbar spine have a naturally-occurring curvature, commonly referred to as a lordosis. A traumatic occurrence can effectually disturb and sometimes drastically impair one's lordosis in their cervical or lumbar spine. The effects of the reversal of one's lordosis can be extremely harmful to a patient. Notable, the lack of cervical spine curvature causes tension on the spinal cord and carotid arteries as they ascend into the brain to feed it oxygen and nutrients. This can cause dizziness, headaches, nausea, fatigue, tinnitus, pain, nervousness, insomnia, high blood pressure, and confusion, just to name a few adverse effects.

[2] The bones of the spinal column, more commonly known as vertebrae, protect nerves that come out of the brain and travel down one's back to form the spinal cord. Nerve roots are large nerves that branch out from the spinal cord and leave one's spinal

defendant's insurance company has opined that he found bulges at the L4/5 and L5/S1 levels which were pre-existing to the subject motor vehicle accident. I completely disagree with this analysis and agree with the findings of Ms. STANFORD's treating radiologist of traumatic bulges.

21. It should be noted that the defendant's paid radiologist, agreed with the treating radiologist that the lumbar discs were well maintained in height and signal intensity. These findings would preclude a finding that the discs were bulging as a result of a degenerative process. There was no dessication of the discs (lessening of water content) which would lead a medical professional who was concerned with the health of their patient to opine that the findings of bulging discs were degenerative in nature. In my review of the lumbar films, I agree that the disc heights and signal are normal which to a reasonable degree of medical certainty, means that the bulging discs were traumatically induced by the December 17, 2011 accident, and not degenerative in nature. There was no loss of fluid in the discs prior to the bulges.

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column between each vertebrae. The spinal bones are separated by discs. These discs cushion the spinal column and provide space between one's vertebrae. The discs allow for movement between the vertebrae, which allows for bending and reaching. These discs may become displaced or caused to bulge as a result of traumatic injury or strain. When this occurs, pressure is placed on the spinal nerves. This can result in severe pain, numbness or weakness and loss of range of motion, as experienced by the patient herein.

22. The initial diagnosis was:

a. Post traumatic bilateral carpel tunnel syndrome;

b. Post traumatic right C5/6 cervical radiculopathy and straightening of the normal cervical lordosis with pain and muscle spasm;

c. Post traumatic postrerolateral bulging of the neural foramina bilaterally at the L3/4 and L4/5 intevertbral discs;

d. Substantial loss of range of motion of the cervical and lumbar spine as indicated by the objective range of motion testing

23. All of the findings, to a reasonable degree of medical certainty, were causally related to the December 17, 2011 motor vehicle accident. The reports, including the MRI and neurodiagnostic studies confirmed the findings upon our initial exam, including limited range of motion in the lumbar and cervical spine, as well as muscle spasm in the lumbar and cervical spines and restriction and dramatic limitation of motion. Indeed, the loss of range of motion is caused by the objectively confirmed injuries to the lower back and neck. To a reasonable degree of medical certainty, the herein injuries and limitations of range of motion in STANFORD's cervical and lumbar spine, as compared to those of a normal spine[3], are dramatic in nature and are causally

[3] Small bones called vertebrae, align to form the spine in every person's back. A healthy spine supports the body, while

related to the December 17, 2011 motor vehicle accident. Ms. STANFORD was advised to continue on her regiment of physical therapy and chiropractic treatment and was referred for a pain management evaluation.

24. At the initial examination, Ms. STANFORD's prognosis was guarded. Her functional level was poor and she was unable to perform her customary activities of daily living such as shopping, work and social activities. She was advised to refrain from working at her job as a police officer at a hospital by myself, her treating internal medicine physician, Okon Umana, M.D., her neurologist, Ranga Krishna, M.D. and her treating chiropractor, Allan Wattenmaker, D.C. from working from the time of the accident, December 17, 2011 until May 1, 2012. She was consistently evaluated by colleagues at the clinic It 384 East 149th Street, Suite 518, Bronx, New York and was instructed not to return to work until after her visit on April 30, 2012, a period of one hundred and thirty five days.

25. As a result of the clinical findings and the test results, Ms. STANFORD was placed on a comprehensive conservative

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allowing movement. The lumbar spine forms the curve below your waist in the lower back. Five large vertebrae make up the lumbar spine L1 through L5. A bony arch at the back of the vertebra, called the pars, and the facet joints connect the vertebrae together. An opening at the center of each vertebra forms the spinal canal. The spinal cord which contains the nerves is located inside the protective canal. Nerves which extend off of the spinal cord travel throughout the body and exchange information with the brain.

physical program that included chiropractic manipulation, rigorous physical therapy, electric stimulation, intermittent traction, ultrasound and massage with deep tissue work. She underwent intensive treatment up to four times a week for the first three months when she reached a plateau.

26. Ms. STANFORD was still suffering from severe pain and stiffness in her cervical and lumbar spine three moths after the accident so she was placed on a series of chiropractic manipulations under anesthesia by Dr. Howard Past and Allen Wattenmaker, chiropractors in March of 2012. Thereafter she received additional physical threapy and chiropractic adjustments at a rate of up to three times a week until the end of April, 2012. When she returned to work in May of 2012, she remained in a partial disability and continued treatment approximately once a week until her no-fault benefits were terminated in July of 2012. She was advised on a course of home exercises ans stretching at that time. Ms. STANFORD was further advised to use caution when performing any type of physical activity, no matter how menial, as it is important that she not strain or exert herself, thereby increasing interthecal pressure and further exacerbating her already-damaged disc material.

RECENT EXAMINATION

27. My office recently examined Ms. STANFORD for the purpose of apprising this court of her current physical state of health on

September 9, 2013. Ms. STANFORD states that she has continued with the recommended stretching regiment but that she still suffers from daily debilitating pain in her lower back and neck during her routine activities of daily living. She had suffered no further accidents and no additional injuries since December 17, 2011.

28. While the aforementioned treatment was partially beneficial, she complained that she has been unable to fully participate in her routine activities of daily living, namely: house cleaning, laundry, exercising, sitting/standing/walking for more than thirty (30) minutes, any heavy lifting, reaching, and any light repetitive motions. In particular, she continues to suffer from intense and debilitating neck and lower back pain and stiffness which radiates into her shoulders and upper extremities as well as her legs. She continues to be in obvious distress.

29. Range of motion testing was performed again on September 9, 2013, in the aforementioned manner using the aforementioned instruments. The results were as follows:

September 9, 2013 CERVICAL SPINE EXAMINATION FINDINGS			
RANGE OF MOTION	NORMAL	FINDINGS	LOSS
FLEXION	60	50	17%
EXTENSION	60	50	17%
LEFT ROTATION	75	70	7%
RIGHT ROTATION	75	70	7%
L. LATERAL FLEXION	30	20	33%
R. LATERAL FLEXION	30	20	33%

January 30, 2012 LUMBAR SPINE EXAMINATION FINDINGS			
RANGE OF MOTION	NORMAL	FINDINGS	LOSS
FLEXION	85	60	29%
EXTENSION	30	10	67%
L. LATERAL BENDING	25	15	40%
R. LATERAL BENDING	25	15	40%
L. LATERAL ROTATION	40	32	20%
R. LATERAL ROTATION	40	32	20%

30. As of September 9, 2013, the plaintiff, Ms. STANFORD, still complained of pain and discomfort at the sites of injury, as well as difficulty with excessive standing/walking/sitting, rising to walk after sitting, cleaning, lifting, ambulating up and down stairs and working with periods of severe exacerbation of pain and weakness. I also observed a persistent and dramatic loss of range motion in both the cervical and lumbar spine. It is clear that the loss of range of motion in both the cervical and lumbar spine - as compared to the range of motion in a normal spine - is both permanent and significant in nature, despite the aforementioned treatment following the December 17, 2011 accident.

31. As evidenced by the September 9, 2013 examination, the traumatically induced injuries from the December 17, 2011 accident diagnosed and listed above by objective tests are to be considered permanent in nature to a reasonable degree of medical certainty. Ms. STANFORD has injured and weakened the supportive soft tissue and connective tissue structures in both the lumbar and cervical

regions, resulting in up to a 33% loss of use in the cervical spine and up to 67% in her lumbar spine. Ms. STANFORD has permanent restriction of ranges of motion in both her cervical and lumbar regions as indicated resulting from the subject motor vehicle accident.

32. To a reasonable degree of medical certainty, Ms. STANFORD's inability to move both her cervical and lumbar spines to the full range of what is normal constitutes a severe and permanent injury which is causally related to the accident of December 17, 2011. Ms. STANFORD has received partial, yet temporary relief from her condition, however her activities of daily living exacerbate her condition. Furthermore, she has been permanently partially disabled as a result from the December 17, 2011 accident. As of my examination on September 9, 2013, the herein injuries are permanent. The findings and conclusions which constitute the basis of this affirmation are consistent with the conclusion that Ms. STANFORD's spinal deficits are comparatively abnormal for an adult of her age and circumstances.

PROGNOSIS AND DISABILITY

33. To a reasonable degree of medical certainty, the foregoing findings are permanent in nature. The traumatically induced injuries have injured and weakened the supportive soft tissue and connective tissue structures in both the cervical and lumbar regions. During periods of exacerbation, the plaintiff will

require medication and future treatment. Ms. STANFORD will not be able to perform her activities of daily living in a full and complete and continuous pain free environment as she did before the accident of December 17, 2011, as a result of the injuries to her neck and lower back. She has a permanent partial disability within her neck and lower back, which are significant and will predispose her to further problems from aggravation and/or trauma.

34. Upon my re-examination of Ms. STANFORD on September 9, 2013, she complained of exacerbated episodes of neck and lower back pain. She averred that the pain is persistent and that she can no longer bend down to touch her toes. In fact upon re-examination she could only bend down eighteen inches from her toes. Additional medical treatment was recommended including epidural injections and possible surgery.

35. It is my professional opinion based upon a comprehensive case history, examination and reexamination of Ms. STANFORD that the accident of December 17, 2011 was the competent producing cause of the injuries, medical conditions and sequallae set forth above.

36. There is a direct clinical correlation between the findings, the MRI reports and the neurodiagnostic studies. The patient, as a direct result of the accident of December 17, 2011, sustained permanent injuries to her spine, muscular and neurological systems. Ms. STANFORD has significant permanent restriction of ranges of motion to both his lumbar and cervical

regions, as indicated by the September 9, 2013 medical examination, especially when compared to the ranges of motion generally found in a normal and healthy spine. There are permanent significant residuals that are affecting her ability to perform all of her previous routine activities of daily and social living, all of which directly result from the subject motor vehicle accident.

37. The prognosis for the plaintiff, MS. EBONY STANFORD, is guarded. Her injuries will require a lifetime of conservative care. Further, irreversible sequale include scar tissue formation, calcific arthroses and premature degeneration of Ms. STANFORD's affected joints. She has received partial yet temporary relief from her condition. However, her activities of daily living exacerbate her condition.

38. To a reasonable degree of medical certainty, the plaintiff, EBONY STANFORD:

a. Sustained a significant limitation in the use of a body function or system, to wit: Straightening of the cervical lordosis and C5/6 cervical radiculopathy and bulging discs at the L3/4 and L4/5 levels in the lumbar spine and resultant loss of substantial range of motion, all of which were confirmed by objective tests;

b. A permanent consequential limitation of the use of a body organ or member, to wit: Straightening of the cervical lordosis and C5/6 cervical radiculopathy and bulging

discs at the L3/4 and L4/5 levels in the lumbar spine and resultant loss of substantial range of motion, all of which were confirmed by objective tests; and

c. A medically determined injury or impairment of a non-permanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less that ninety days during the one hundred eighty days immediately following the subject motor vehicle accident, to wit: as a result of the aforementioned injuries, I and my associates advised Ms. STANFORD to refrain from her regular employment as a hospital police officer for the first 135 days immediately following the accident.

WHEREFORE, it is respectfully requested that the within motion be denied in its entirety and that the plaintiff's cross motion be granted in its entirety.

Dated: November 8, 2013

STANLEY LIEBOWITZ, M.D.