

## **COURT WATCH**

FROM THE OFFICES OF FLAHERTY, SENSABAUGH & BONASSO, PLLC.

February 21, 2007

*Brooks v. Galen of West Virginia, Inc.*, No. 33207.

Appeal from the Circuit Court of Greenbrier County

- TOPICS:**
- I. Whether the trial court erred by taking judicial notice of the findings of the Social Security Administration.**
  - II. Whether the trial court erred by improperly excluding plaintiff's theory of liability with respect to the emergency room physicians.**

In *Brooks v. Galen of West Virginia Inc.*, the plaintiff brought a medical malpractice suit against the defendant hospital claiming that the hospital improperly inserted an I.V., causing injury to his hand. As a result of the I.V.'s improper insertion, the plaintiff alleges that he suffered from Chronic Regional Pain Syndrome ("CRPS"). The plaintiff further claimed that defendant improperly treated his CRPS. At trial, the jury returned a verdict for the defendant hospital. The plaintiff appealed to the West Virginia Supreme Court, alleging two different errors.

First, the plaintiff claims that the trial court improperly took judicial notice<sup>1</sup> of the findings of the Social Security Administration ("SSA"). Prior to the trial, the SSA in a disability benefits determination, found that the plaintiff suffered from somatoform disorder. At trial, the court took judicial notice of the SSA's findings. The plaintiff alleges that the court erred when it took judicial notice of the SSA's findings because the jury had to accept as fact that the defendant suffered from somatoform disorder. The plaintiff further alleges that his theory at trial was that he suffered from CRPS, and the SSA's findings regarding somatoform disorder were prejudicial to his case.

The defendant counters this argument by asserting that the plaintiff cannot re-litigate the nature of his alleged disability due to the doctrine of collateral estoppel. "Collateral estoppel" is "[a]n affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs

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<sup>1</sup> "Judicial notice" means "[a] court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." *Black's Law Dictionary* 851 (7<sup>th</sup> ed. 1999).

significantly from the first.”<sup>2</sup> The defendant claims that since the SSA already ruled that the plaintiff’s injury was somatoform disorder, the plaintiff is barred from relitigating the issue and claiming that his injury was CRPS. Thus, the defendant claims that the trial court properly took judicial notice of the SSA’s findings.

For his second instance of error, the plaintiff claims that the trial court erred by improperly excluding one of plaintiff’s theories of liability. Prior to trial, the plaintiff asserted that one of his expert witnesses would testify that the emergency room physicians were negligent. However, the trial court granted the defendant’s motion to prohibit the plaintiff from introducing the evidence because plaintiff’s expert failed to testify about the emergency room physicians’ alleged negligence during his deposition.

After the defendant’s motion was granted, the plaintiff sought immediate relief from the West Virginia Supreme Court. The Supreme Court denied the writ, and thus, the trial proceeded without the claim against the emergency room physicians.

On appeal, the plaintiff alleges that the trial court improperly excluded the evidence of the emergency room physicians’ negligence. The West Virginia Supreme Court of Appeals is scheduled to hear arguments on this case on February 28, 2007. Additional Court Watch updates will be provided as this case continues to develop.

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<sup>2</sup> *Black’s Law Dictionary* 256 (7<sup>th</sup> ed. 1999).