

Staten Island Judge Invalidates DC's Diagnostic Testimony

Editorial Staff

STATEN ISLAND, NY - In the case of *Jackson v. Willis* (#10152/98), a lawsuit arising from an automobile accident, New York City Civil Court Judge Philip Straniere, citing New York state education and insurance laws, dismissed the testimony of the treating DC.

During the damage phase of the trial, plaintiff Cassandra Jackson testified that her head struck the dashboard and then the seatback during the accident. She was taken by ambulance to a nearby hospital, examined in the emergency room and then released.

Ms. Jackson began a course of treatment with Arthur Patterson, DC, for three visits per week for four months. Dr. Patterson testified that he performed orthopedic and neurological tests on Ms. Jackson. He testified that she was completely disabled for four months after the accident because of "multiple vertical subluxations."

Under cross-examination, according to the *New York Law Journal*, Dr. Patterson was unable to answer whether Jackson had suffered ligament damage, saying the issue was "beyond the scope of his practice." He also conceded that a medical determination of a subluxation would be different from a chiropractic determination.

The defense asserted the chiropractor failed to describe the purpose of his tests and whether they were accepted by physicians or only chiropractors as diagnostic tools, and that he failed to testify how the plaintiff's results differed from accepted norms for the tests.

The defendants moved for a dismissal, stating that there was no medically determined serious injury that would permit the accident victim from performing her usual and customary daily activities. While New York insurance law does not specify who may offer an opinion on whether a plaintiff has suffered a serious injury, it does call for a "medically determined injury or impairment."

Definitions in the New York education law delineate a tenuous distinction between the professional qualifications of chiropractors and medical doctors. The law says a doctor of medicine can "diagnose and treat," while a doctor of chiropractic is permitted to "detect and correct." The Third Department of the state's appellate division ruled in 1965 that a chiropractor cannot diagnose and treat disease, and that the terms "detect" and "correct" are not synonymous with "diagnose" and "treat."

Judge Straniere ruled: "It can only be concluded that a chiropractor cannot make a 'medical' determination of an injury or impairment, and can only make a chiropractic finding in that regard." With no "medically determined injury or impairment" to present to the jury to prove Jackson's contention that she had suffered a "serious injury," the defendant's motion for dismissal was granted.

