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TO THE COURT

LIABILITY & CAUSATION REPORT ON XXXX

DATE OF REPORT : 4TH JANUARY 2013

DATE OF INJURY : 1ST MARCH 2007

FULL NAME	XXX
ADDRESS	XXX XXX XXX
DATE OF BIRTH	XX.XX.XX
REPORT REQUESTED BY	XXX XXX XXX XXX
REFERENCE	XXXXX

EXPERT'S DECLARATION

I, Bo Povlsen, have been a Consultant Orthopaedic Surgeon, since I was appointed to Guy's & St Thomas' NHS Trust on 1st July 1995 and remain in active non-NHS clinical practice since July 2014. I have been a member of the British Elbow and Shoulder Society since 1995**.** I am also an Associate Professor in Hand Surgery from the University of Linkoping, Sweden, since 2nd June 1998. I am actively involved in hand and upper limb research since 1990 with more than 60 published scientific articles and I lecture nationally and internationally both to students, junior doctors and fellow consultants.

I understand my duty is to the Court and the following opinion has been compiled with the duty rule (rule 35,10(2)). I understand the Experts duty is to help the Court on matters within my expertise.

I understand that my duty as an Expert Witness is to the Court. I have complied with that duty. This report includes all matters relevant to the issues on which my expert evidence is given.

I have given details in this report of any matters which might affect the validity of this report.

The contents of the report are true to the best of my knowledge and belief.

STATEMENT OF TERMS OF REFERENCE

This report was requested by XXX for the purpose of preparing a medico-legal opinion based on review of medical records only regarding causation and liability in connection with a claim for damages by XXX arising from potential clinical negligence after an injury to his right hand on 1st March 2007. The Claimant was not examined for the purpose of this report.

DOCUMENTATION AVAILABLE

HOSPITAL NOTES

Centre for Hand & Upper Limb Surgery, St Elsewhere

First entry: 19.03.09 Last entry: 19.09.13

Hand Therapy Department, St Elsewhere

First entry: 25.02.08 Last entry: 16.07.09

IMAGING/TEST RESULTS

14.04.08	X-rays, right hand x5
23.06.10	X-ray right scaphoid x2
09.07.10	EMG report
12.07.10	CT report, right wrist
20.12.12	X-ray right scaphoid x2
19.09.13	X-ray, right scaphoid

GP NOTES

First entry: 18.02.08 Last entry: 11.09.12

MEDICAL REPORTS

XXX, Consultant Orthopaedic Surgeon

24.04.13, 04.01.13 & 03.01.12

XXX, Consultant Orthopaedic Surgeon

19.08.13, 07.05.13, 27.03.13, 18.09.12, 02.07.12 & 22.05.12

XXX, Plastic, Hand & Microsurgeon

01.05.12

XXX, Consultant Occupational Therapist

26.10.12

REVIEW OF DOCUMENTS

It is confirmed that the Claimant was seen immediately after the injury to the right hand in the A & E Department at St Elsewhere on 1st March 2007. A plain x-ray was ordered and it was reported as not showing any fractures. The diagnosis was sprain hand right and there was no suggestion of any further follow up.

On 23rd March 2007 the Claimant re-presented himself to the A & E Department at St Elsewhere. No new x-rays were taken but the previous x-rays from 1st March 2007 were available and had been reported not showing any bony injury. There was tenderness over the dorsal aspect of the wrist, no suggestion of any further x-ray or immobilization in cast.

On 7th July 2007, the Claimant again sought advice at St Elsewhere A & E Department because of stiffness and pain in the right hand and another x-ray was ordered which showed an old scaphoid fracture though the official x-ray report was reported normal. Because of continual problems the Claimant was subsequently referred for a CT scan of the right wrist which was carried out on 24th September 2007 that showed a non-united fracture through the scaphoid, now six months after the initial injury.

On 23rd January 2008 (four months after the previous CT scan with no intervening x-ray) the Claimant had exploratory surgery by Mr XXX who after the operation reported that the scaphoid fracture had gone on to union.

On 30th January 2009 the Claimant was operated at St Elsewhere Centre for Hand and Upper Limb Surgery with arthroscopy and screw compression of non-union scaphoid fracture, no bone graft and no ligament repair. On 14th December 2010 the Claimant had further surgery to try and remove the screw as the head was protruding from the scaphoid which has led to degenerative changes but this failed as the screw head was destroyed.

OPINION

On the balance of probability, I have the following opinions:

1. I am of the opinion that based on the initial x-rays on 1st March 2007 it was reasonable to have a temporary diagnosis that suggested that no bony injury had taken place. However because of the Claimant's pain in the wrist and his age and the known implication of missing a scaphoid fracture, he should have been reviewed again a couple of weeks later and if still complaining of pain in the wrist, have had a new series of x-rays and for a precautionary measure been treated in a cast for a couple of weeks even if no clear fracture was seen.

2. I am of the opinion that had the Claimant been investigated with a proper series of scaphoid views on 23rd March 2007 and placed in a scaphoid cast regardless of reviews of x-rays then on the balance of probability the fracture would have healed without any need for surgery and on the balance of probability it would have healed within 12 weeks.

3. I am of the opinion that scaphoid fractures are notoriously difficult to diagnose radiologically on plain x-rays and therefore the radiological findings should be compared with the patient's clinical complaint and if in any doubt, a CT scan should be carried out.

4. I am of the opinion that when the Claimant was reviewed on 23rd March 2007 complaining about continual pain, he should have been re-x-rayed specifically to rule out a scaphoid fracture as this represents the most important fracture that is frequently missed in the wrist. On the balance of probability the Claimant's fracture is likely to have been diagnosed on a standard series of scaphoid views and could have been treated in a simple scaphoid cast which on the balance of probability would have lead to a union within 12 weeks.

5. I am of the opinion that had the Claimant been treated in a cast on 23rd March 2007 on the balance of probability he would have had a minor and insignificant problem in his wrist as he would have avoided the need for surgical interventions.

6. I am of the opinion that the exploration that was carried out by Mr XXX on 23rd January 2008 was negligent as, despite a fracture existing, Mr XXX failed to detect and adequately treat this fracture with a screw fixation. This could have been done similar to what was carried out at the St Elsewhere Hand and Upper Limb Unit on 30th January 2009.

7. I am of the opinion that if Mr XXX had inserted a screw on 23rd January 2008 the subsequent surgery that was carried out on 30th January 2009 would not have been necessary.

CONCLUSION

I am of the opinion that on the balance of probability the management that the Claimant received at St Elsewhere, both in the A & E Department and subsequently in the Orthopaedic Department was negligent and fell below acceptable standards, according to the Bolam test.

As a consequence of the above negligence managing the scaphoid fracture required three surgical procedures, 2008, 2009 and 2010, instead of a simple 12 weeks of cast immobilisation.

If the Claimant had been treated appropriately in a simple plaster cast within the first four weeks of the injury then he would, on the balance of probability, only have developed minor and insignificant problems in the wrist as the further trauma caused by the two surgical procedures would have been avoided.

As the Claimant's wrist did not show any radiological signs of degenerative changes or ligament injuries in March 2007 or when inspected during the arthroscopy on 23rd January 2008 or during the surgery on 30th January 2009 then, on the balance of probability, the arthritis and ligament injuries that have subsequently been diagnosed are a direct consequence of the two surgical procedures.

During the operations injury was inflicted on the wrist by drilling of the articular cartilage of the scaphoid and cutting through the ligaments in the wrist was inflicted. Furthermore, as the screw removal on 14th December 2010 failed as the screw head was destroyed, the Claimant would not have been faced with a retained proud screw head in the scaphoid which has led to degenerative changes.

The Claimant has now lost movement in the wrist, has lost grip strength and restricted range of movement and has arthritic changes in the wrist. The Claimant has clinical signs of carpal tunnel syndrome and on the balance of probability will require a fusion of the wrist. Such a further procedure with a fusion of the wrist is further complicated by the retaining screw in the scaphoid which will make a fusion fixation difficult.

Neither of the above surgical complications would have developed had the Claimant been treated correctly in a scaphoid cast within the first 4 weeks.

The likelihood of developing degenerative changes after a scaphoid fracture with minimal displacement is less than 10%. The majority of reported degenerative changes after scaphoid fractures that have gone on to union have developed in cases where surgery has been required.

It is alleged by the Claimant that in this case the degenerative changes have developed because of the incorrect placement of the screw which is not buried below the articular cartilage surface and the subsequent failure to remove the screw in December 2010.
Therefore all the current problems and the three surgical procedures are a direct result of the negligence and all the functional problems with pain, stiffness and weakness are a direct result of the negligence.

Expert's Declaration

I Bo Povlsen, Associate Professor in Hand Surgery, Consultant Orthopaedic Surgeon, DECLARE THAT:

1. I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.

2. I am aware of the requirements of Part 35 of the Civil Procedure Rules, the accompanying Practice Direction and the Protocol for the Instruction of Experts to give Evidence in Civil Claims.

3. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

4. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

5. I have shown the sources of all information I have used.

6. I have not without forming an independent view included or excluded anything which has been suggested to me by others including my instructing lawyers.

7. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.

8. I understand that:
   a) my report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath or affirmation;
   b) I may be cross-examined on my report by a cross-examiner assisted by an expert.
   c) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

9. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

Bo Povlsen
Assoc Prof in Hand Surgery
Consultant Orthopaedic Surgeon

References:

Trauma. B. Povlsen & D. Snashall In *Fitness for Work*, Edited by R Cox. Oxford Medical Publications. 2000. Pp 255-273.

Arthroscopic findings in wrists with severe post-traumatic pain despite normal standard radiographs. Adolfsson L. **Povlsen** B. *Journal of Hand Surgery - British Volume. 29(3):208-13, 2004 Jun.*

Scaphoid Fractures. Canale & Beaty: Campbell's Operative Orthopaedics, 11th ed. Part 18, Chapter 66

Osteoarthritis of the wrist. Canale & Beaty: Campbell's Operative Orthopaedics, 11th ed. Part 18, Chapter 66

Carpal Ligament Injuries and Instability Patterns. Canale & Beaty: Campbell's Operative Orthopaedics, 11th ed. Part 18, Chapter 66

Intra-Articular Fractures of the Distal End of the Radius in Young Adults. Jerry L Knirk & Jesse B Jupiter. The Journal of Bone and Joint Surgery. Vol. 68A, No. 5, June 1986. 647-659