Ed Johnston W/C file: Key medical and procedural docs

Theory of case: Liberty Mutual's loss (for several years before rediscovering them) of MRI documents, its harassment of Ed's doctors, and its continued back-and-forth game of belatedly accepting then denying his claims, constitute, in the face of the medical record, actionable bad behavior.

Note: We have excluded physical therapy stuff as it is less important than the doctors reports, and the case file is large.
Note: "C" means the writer has complimented Ed personally.
Note: Documents pulled out because contain a good summary as to medical history have word SUMMARY (in caps & bold) in description
Note: Important negative comments that tend against theory of case are also noted.
Procedural documents are not indented; medical ones are.

FIRST INJURY: 11/4/89
Pip-Tide 836 SW Bay Blvd., Newport. Hit with a pipe on and around the back of the neck.

Notice of Claim Acceptance for 11/4/89 injury by Liberty for "acute neck strain" – "non-disabling," dated Dec. 13, 1989

- Supplemental Med Report 828 by Dr. Gilbert Lee: avoid fights; not medically stationary, anticipated date of same in "3 months" dtd 12/26/89
- Supplemental Med Report 828 by Dr. Gilbert Lee: do not get involved in fights; not medically stationary, anticipated date of same is "3/90 to 6/90" dtd 3/1/90
- Note by Dr. Lee "the pain is now in the back of his head, neck and upper back, dtd 4/12/90
- Ed gets into fight 4/27/90 at Pip Tide with a 6-foot man; worsens pain. (Noted in Physical Therapy Authorization" by Dr. Lee 5/8/90

Insurer's Report dated 5-31-90 Accepted the injury as "disabling."

- Supplemental Med Report 828 by Dr. Gilbert Lee: not released for work, suggest Independent Med Exam, no date given for expected medically stationary date; dtd 6/6/90
- BBV medical report: found: closed head injury, moderate cervical strain, upper cervical area…" "we do not feel this man is able to pursue employment as a doorman/bouncer. … Estimate of resuming employment is difficult. We would guess three months. We would expect that this man will recover from these injuries and have no restrictions. His current problems are primarily due to his November 4, 1989 injury though he probably did not do it any good when he was injured again, in April of 1990. It does not appear that his condition is stationary at this point. We feel that the neurological base has to be touched." Drs. Thad Stanford, Orthopedic Surgeon and Berle Barth, Neurologist, dtd July 9, 1990 . (Medical Arbiter report)
- Work Release by Dr. Bernstein: sedentary work and light work (lifting 20 lbs, carrying 10 lbs), not light/medium, nor medium nor heavy work. Restrictions are permanent. Dtd 9/24/90
- Dr. Lee concurred with BBV report, 7/23/90
- Portland Magnetic Imaging Lab, Dr. John English, MRI Interpretation: "very small central disc herniation at the C4-5 level. A left paracentral disc herniation is considered to be present at the C5-6 level but is not well visualized. Developmentally narrow AP diameter of the spinal canal." Dtd 11/28/90
- Dr. John Serbu, finds Ed "neurologically negative. I do not believe he has a herniated disk. He does have a slight central bulge, but I do not believe that is symptomatic. I believe this man's best treatment would be to return back to heavy work which he did previously." 1/7/92
- Bernstein agrees, except with regard to work capacities; says Ed able to do "lighter, sedentary physical work … less than 20 pounds on a regular basis." ltr 1/17/91
- Western Medical Consultants, Impression, "Herniated intervertebral disc at C5-6 on the left." "Mr. Johnston is capable of modified, but not regular work." He is "not medically stationary" and probably won't be for four months. Dr Thomas Gritzka, Orthopedist, and R. Glenn Snodgrass, neurologist, dtd 1/17/91
- Liberty letter to Dr. Bernstein

dtd 1/25/91 . signed by Claims Examiner Hepp, “I am very surprised by” the IME report by Western Medical as “its conclusions and recommendations for treatment differed drastically from Dr. Serbu’s earlier letter dated 1/7/91 .” Bernstein concurred with the Western Medical Examiners.

- In letter Feb 4, 1991 , Bernstein repast agreement with Western Med. And notes his disagreement with Serbu re: ability of patient to do regular work.
- “I believe he is currently medically stationary” but needs PT 3x per week. 2/11/91 , Bernstein

Document with text “Request for Reconsideration, Page 2” at the top, the origin of which is unclear, but probably from Ed’s then-lawyer. The date is not given. It is attached to a Request for Reconsideration sheet. Its date is unclear. Its 3rd paragraph states “On 2/11/91, Dr. Bernstein was apparently worn down by Liberty Northwest’s harrassment and responded to a phone call from the claims examiner by saying: ‘I believe that he is currently medically stationary’, but he continued that he also believed that ‘(Edward Johnston) will need three times a week physical therapy for the next three months in order to maintain that.’ This coerced and qualified statement does not even come close to a medically stationary finding, despite the use of the ‘magic’ words.”

DETERMINATION ORDER, W/C Div. “The Department orders you entitled to compensation for temporary disability, less time worked, as follows… The insurer is ordered to pay you $3,200. Dated April 9, 1991

- C. “As you can see, he has cervical strain as well as a disk herniation in the cervical spine…” Dr. Bernstein 4/10/91
- OREGON PAIN CENTER (OPC): good SUMMARY of medical process to then. May 23, 1991
- OPC May 23-24, 1991 , “His previous permanent disability award appears appropriate. He will probably be limited to work in the medium category.” Findings, “Mild herniated disc C5-6 left by MRI, questionable significance without objective neurological; correlate. (p.1) … On other hand he has equivocal Spurling’s test. (p.3) SUMMARY
- OPC May 29, 1991 , “limited to work in the medium category. There are some issues of inconsistency, compliance and mild secondary gain…” (Note: huh?)

ORDER ON RECONSIDERATION: Claimant requested reconsideration…. "Partial disability is reduced to NONE." Dtd May 7, 1992

NOTICE OF CLOSURE: finding of "Unscheduled permanent partial disability of 25.6 degrees for 8 percent equal to $2,500 for neck." Notes that any overpayment has been offset. Time loss compensation paid $7,958; medical compensation paid $22,139. 10/25/91

OPINION AND ORDER: dated August 26, 1992 , Ed gets 15% for unscheduled neck and left shoulder permanent partial disability making the total award to date 15 percent. Attorney gets a share; Liberty gets an offset; all other relief requested by claimant denied. NOTE: Findings include summary of some medical findings. It states "The award was reduced to zero by Order on Reconsideration dated May 7, 1992 on a finding of no impairment by Dr. Stanford the appointed medical arbiter. "Dr. Stanford, should not have been appointed medical arbier since he was previously involved with this case as an agent of a party" - insurance company consultant. (page 3) Ed gets 15% disability award. By Referee D. W. Daughtry

ORDER ON REVIEW by W/C Board. Agreed with Ed's doctors rather than referee, finding that "claimant does have permanent impairment." Finds Ed has sustained a 15% loss of earning capacity as result of neck and left shoulder injury.
Despite evidence of exaggerated pain claim by Ed, board found it would "rely on the impairment values concurred in by claimants attending physician (Bernstein) as found in Dr. Holmes Discharge Status Report." NOTE THE STATED DISCHARGE REPORT IS NOT IN THE RECORD ED HAS. That was not done by the medical arbiter. That was Dr. Stanford, (see July 9, 1990 report, above). Dtd June 18, 1993 , David Lipton and Donald Hooton

- PCH E/R note: cervical disk disease, Feb 5, 1994 , sensitive at C4, 5 and 6
- PCH E/R note: black-out while driving, and pain and tingling 11/19/94
- PCH E/R note: (Notes history of closed head injury) dental pain 5/16/95
- PCH E/R note "Patient has a pattern of left upper extremity weakness that does not clearly correspond to any discreet myotomal level. It

seemingly would involve at least C5, C6 and C7. There is no sensory loss at these levels and there is no loss of deep tendon re=flexes at these levels. There is no evidence of atrophy, thus I am somewhat confused about the patient's motor weakness." 6/9/95

- PCH Diagnostic Imaging Report (DRI) Brain MRI 2/22/96 : normal.
- PCH E/R note: "He sustained herniated disks at C3, 4 and 5." "Blackout ten days ago where he wrecked his truck." Has been asked to surrender his license by state but will not do so "and does not care whether he kills innocent bystanders. ... because he feels he has been screwed up by the system and he doesn't give a damn." Refers to closed head injury and herniated disks. Calls him a "psychopathic personality." Dr LeVann 2/25/97
- PCH DRI 9/22/97 There is some degenerative change at C4-5 and C5-6 consisting primarily of intervertebral disc narrowing and anterior bulging. There is some suggestion of spasm."
- Ltr dtd 11/12/97 : "In my opinion Mr Johnson may well have a painful cervical spondylosis disorder. ... repeat MRI scan is probably reasonable to determine whether there have been late changes with significant root or spinal cord entrapment." Robert Hacker, Neurosurgeon ltr to Dr Ceplus Allin.
- Neurosurgical History and Physical, by Dr. Hacker, dtd Nov. 12, 1997 ."A review of outside films confirms degenerative changes, most pronounced at the C4-5 and C5-6 level. There is nothing to suggest an obvious deformity or subluxation. The patient has an MRI report that is several years old, documenting spondylotic change at C4-5 and C5-6. These studies apparently have been lost." Impression, "... symptoms potentially related to spinal cord and nerve root entrapment, without clear cut obvious neurological deficit. Rule out spondylotic radiculopathy or myelopathy."
- MR Imaging Associates, 12/12/97 ltr to Dr Hacker, , unsigned ("RCHjh") Conclusions: 1) Abnormality at C5-6 on the left is larger than expected from plain-film findings and probably a combination of cervical spondylosis, foraminal narrowing, and disc herniation. Oblique plainfilms are recommended for correlation. 2) Smaller midline left abnormality at C4-5, probably representing cervical spondylosis rather than disc herniation."
- Brief note 12/22/97: "The MRI scan is reviewed, documenting a large osteophyhtic

deformity with perhaps associated disc protrusion at the left C5-6 level compressing the nerve root and spinal cord on the left side. At the C4-5 level there is a small lesion which appears to be an asymptomatic cervical disc protrusion." "Symptomatic cervical spondylosis with disc herniation, C4-5 left." Proceed with anterior cervical microdiscectomy with fusion, allograft and internal fixation." THIS LEADS TO FIRST OPERATION.

NOTICE OF CLAIM FOR AGGRAVATION, signed by Ed 1/16/98 , signed by Dr Hacker 1-11-98 .

Internal Medicine Associates letterhead, obviously a cover letter. Dtd Feb 9, 1998 . Only text is: "Ms. Jones, 384 pages. Go to hell. Cephus Daniel Vincent Allin M.D." Evidence of further harassment of doctors. (Pamela Jones is the recipient of another letter in Feb 1998, at Liberty , ie, next:)

– Ltr to Liberty, dated Feb 21, 1998 from Dr Hacker. The letter from Liberty it responds to is not in the record but is evidently dated 2/6/98 . The Hacker letter makes it clear the Liberty letter is unhelpful. Hacker replies by numbered paragraphs. 1. includes: "my examination is different now in the sense that his MRI scan documents a large deformity with disc protrusion at the left C5-6 level with compression of the nerve root and spinal cord. Also, the patient has evidence of diminished biceps strength on his left side." 2. "Yes. Be so advised." 3. "Is this a question?" 4. To characterize the nature of this accident as 'neck strain,' in my opinion, is probably incorrect. On the other hand, I expect that cervical spine injury with the episode described has resulted in an osteophyte formation and disc hernia. ... my MRI findings, as well as Dr. Holmes' report are continued within your medical record file." 6. "The patient's present condition is due to a cervical disc herniation, as mentioned above. It is not related to a cervical strain. Cervical sponsylosis and foraminal narrowing may indeed be superimposed upon this condition." (Emphasis added.)
– McKenzie-Willamette Hospital , Physician Robert Hacker: Current Complaint: dtd 03/03/98 . "Outside films confirm degenerative changes at C4-5 and C506. A review of the patient's MRI scan documents a large osteophyhtic deformity with disk protrusion at the left C5-6 level compressing the nerve root and spinal cord. At the C4-5 level there is a small lesion

which appears to be asymptomatic." Plan: proceed with (operation).

– FIRST OPERATION: McKenzie-Willamette Hospital , Physician Robert Hacker: Name of Operation: dtd 03/03/98 . "Pre-operative disagnosis: cervical spondylosis with cervical disk hernia. Post-operative diagnosis: cervical disk hernia, C5-6, left. Findings: There was osteophyte formation at the C5-6 level, but this was broad based without focal foraminal encroachment. At the C5-6 level, there was disruption of the annulus to the left of the midline with disc material extruding into the epidural space. This soft material resulted in compression f the origin of the C6 nerve root. At the conclusion, the epidural space was thoroughly debrided, both nerves nicely decompressed, with satisfactory allograft and plate fixation in place." Ltr from Hacker to Allin, the soft disc herniation extrusion probably was cause of Ed's cervical radiculopathy symptoms.

– 3/31/98 , Ed says pressure is gone, Hacker note

– 4/19/98 E/R Note: neck pain

LTR from Liberty to Ed: reject claim for aggravation April 30, 1998 . "There is insufficient evidence in our file" and "you failed to attend a scheduled independent examination…"

April 30, Insurer's Report states "Liberty NW is denying medical benefits only."

Note by Hacker 7/27/98, after talking with "an attorney" - "the fact that the patient found the onset of his symptoms with the injury described would point to the injury as being the major contributing cause of his disk herniation and need for surgical treatment."

OWN MOTION ORDER REFERRING FOR CONSOLIDATED HEARING (Still referring to "acute neck strain"). July 7, 1998 Liberty had denied compensation for "current cervical disc herniation C5-6 left condition. … (and) opposes reopening on the following grounds: (1) the insurer is not responsible for claimants current condition, (2) surgery of hospitalization is not reasonable and necessary for the compensable injury; and (3) claimant was not in the work force at the time of disability." Consolidated hearing granted.

– Ltr from Strooband to Hacker, asked Hacker to confirm Drs. Gritzka and Snodgrass

view that the herniated disk at C5-6 was due to the 11/4/89 injury. Hacker agreed. Mentions MRI of 11/28/90

OPINION AND ORDER; Dec 21, 1998 . Q: is the neck injury compensable? IT is therefore ordered that the insurer's denial, dated April 30, 1998, is set aside. The insurer shall accept and process claimant's claim..."

NOTICE OF ACCEPTANCE from Liberty dtd 12/29/98 "C5-6 left sided disk protrusion" is an accepted condition. Classified Disabling. (NOTE took them long enuf.) But only re C5-6.

OWN MOTION ORDER: Feb 10, 1999. authorize reopening of claimants 1989 injury claim to provide temporary disability compensation beginning March 8, 1998 ..." DID ED EVER GET THIS COMPENSATION for a decades worth of suffering, incapacity??? States that the ALJ on 12/21/98 finding of causal relation was not appealed by Liberty. They knew they were lying.

NOTICE OF CLOSURE BOARDS OWN MOTION CLAIM. Dtd 3/11/99 To Ed, you are entitled to time loss compensation $8,473, for period 3/8/98 through 2/3/99. How much was owed under decision on Own Motion Order for a Decade? Medically stationary date 2/3/99

- Dr Sayre: something pop in neck; compression feeling: diagnosis strain & spasm 5/24/99
- Diagnostic Imaging Rpt: "some narrowing of the C4-5 and C6-7 discs, potentially secondary to the decreased mobility at C5-6…" fusion seems stable
- May 30, 1999 , pain in neck: E/R note; rear ended in accident
- Diagnostic Imaging Rpt 7/25/99 – no change from prior exam
- 10/11/99 Hacker; some degenerative change at C4-5 and C6-7
- 11/9/99 , Dr Fraser, "neck pain, chronic. No evidence of any neurologic component at this point."
- 8/2/2001 Slipped and fell on wet floor Saturday night. GEORGIES. Severe low back pain and some tingling in knees … reflexes at knees are unobtainable. Don't lift more than15 pounds.
- 8/2 Diagnostic Imaging: no evidence of acute bony pathology. Mild anterior

osteophytosis.

- 10/10/2001 Health Solutions Independent Med Exam. Bullshit IME By Richard Arbeene, "did not identify any work related condition objectively limiting … his regular work." "I would expect the cervical strains to resolve within a period of six to eight weeks." "No permanent impairment as a result of the 07/2/01 reported work injury."
- Diagnostic Imaging Rpt 10/23/01 Dr Gary Theuson. "Broad based disc protrusion C4-5 which is slightly biased to the left and compresses the cord along its ventral surface."
- 10/30/2001 Health Solutions Independent Med Exam. By Richard Arbeene, "cervical and lumbar strains."

Initial Notice of Acceptance, from Liberty: 11/6/2001. for acute cervical and lumbar strains. Non-disabling.

Ltr to Theuson from Liberty. Enclosed is copy of Health Solutions dated Oct 10, 2001. Theuson checked: I do not concur. "I agree with findings but also agree that final determination [unclear] on comparison with prior condition. I have referred patient to original surgeon who did his cervical fusion for re eval with current MRx. Suggest special [unclear]

- 11/26/01 Hacker ltr: Current Complaint. "A review of his MRI scan confirms spinal cord compression and a disc herniation at the C4-5 level with previous cervical fusion at C5-6. Cervical myelopathy due to disc hernia, C4-5.
Faxed memo from Liberty to Liberty. "We only accepted an acute cervical and lumbar strain. These are not surgical conditions and therefore we are not authorizing the surgery for a cervical disc." 12/7/2001 (So, when facts meet insurer opinion, insurer not change opinion here.)

- 2/27/02 MRI of lumbar spine. "There is mild disc space narrowing from L3-4 through L5-S1; these discs also demonstrate decreased signal intensity consistent with desiccation. There is somewhat prominent lumbosacral lordisis….. L3-4 mild broad-based posterior disc bulge, resulting in mild stenosis of the spinal canal. There is mild encroachment on both neural foramina, but no evident impingement upon the existing nerve roots. L4-5. there is a broad-based posterior disc bulge/osteocyte, resulting in minimal stenosis of the spinal canal. The

disc bulge is slightly more pronounced posterolaterally to the right. There are mild hypertropic changes in the facets. These factors combine to result in encroachment upon the right neural foramen. There is mild partial effacement of the perineural fat planes associated with the existing portion of the right L4 nerve root. By Dr Greg Bear.

- SECOND OPERATION 3/4/2002 STAT REPORT: NAME OF OPERATION: Anterior cervical microdiskectomy with canal decompression with instrumented interbody fusion with allograft C4-5, with repeat exposure and explanation of previous fixation plates C5-6. PREOPERATIVE DIAGNOSIS: transition segment disease with cervical spondylotic myelopathy with disk hernia C4-5. POSTOPERATIVE DISAGNOSIS (same). FINDINGS: Spinal cord compression was obvious at the C4-5 level due to disc protrusion, as well as bony osteophyte formation. At the conclusion the canal was thoroughly decompressed with satisfactorily positioned 8 mm allograft in place at C4-5 interspace. The previous Orion plate had been removed at C4-5 and a new ___ plate positioned at C4-5. OPERATION: (see text for description). Dr. Robert Hacker

- 3/5/2002 DISCHARGE REPORT: confirms disc hernia C4-5 (that Liberty refused to accept)

3/18/2002 Ltr from Case Manager Theresa Tracy, Liberty to Dr. Theuson. Asks if Theuson agrees with certain propositions. Liberty: is the acute cervical/lumbar strain resolved? Theuson: “As of 10/23/01 MRI my Rx changed from strain to herniated disc C4-5 level and (unreadable).” “Do you agree that with regards to his accepted strain only he could do his regular work?” Theuson: “He worked until the time of his surgery and cannot work now until recovered.” “Do you agree that with regards to his strains he did not suffer any permanent impairment?” Theuson checked NO box. (Note the game here: Liberty unfairly restricting the question and the doctor declining to play their game).

5/2/2002: Liberty ltr to Ed: “we find that your work injury/activity is not the major cause of your C4-5 cervical disc herniation
5/2/2002 OSHA Citation and Notification of Penalty. “The floor area between the dishwashing department and the grill work area, in the kitchen, becomes slick

when water from the dishwashing department is tracked or spilled and grease from the grill area is tracked on to the wet floor."
5/8/2002 Insurer's Report. Status of claim: partially denied; nondisabling; injury; original injury; claim was previously deferred/nondisabling; notice of partial denial.
Undated: Note, "I Alvaro, Z.B. witnessed a cook fall and slip in the kitchen area…."

- 8/16/02 Diagnostic Imaging Rpt, Sam PCH, 4 views. "… generalized straightening of the cervical curvature … There (are) inferior plate screws inset at the inferior aspect of the C5-6 disk space, and the disk space appears to be ossified. There are moderate degenerative changes at C6-7. … The immediate prevertebral soft tissues are abnormally thickened at the C3 level."
- 9/23/02 "continues to have symptoms consistent with mgelopathy, with electric shocks which will radiate into his arms and won into his legs. He tells me these symptoms do not seem to have changed much." Hacker
- 10/09/2002 MRI cervical spine. C3-4 level reveals mild disk bulging with no focal or discrete herniation and no significant canal or foraminal narrowing. C4-5 and C5-6 levels reveal interbody fusions. … No significant canal or foraminal stenosis. Identified. There appears to be a mild disc bulge at C6-7 with no significant canal or foraminal narrowing. Mild left foraminal narrowing is noted. Dr. Larry Wampler
- 10/29/2002 Ltr to attorney McAllister, answering questions, from Dr Paul Meunier. X—Rays. "There is some disc space narrowing at C4-5 and early posterior osteophytic ridging at the same level. There is a small linear calcification anterior to the C4-5 disc level which appears to be ligamentous in origin. … this entire series of examinations are not appreciable changed. The MRI examinations likewise reveal stable findings at the C4-5 level. The findings on MRI correspond with the findings on plain film… There is vertebral body endplate spondylosis or hypertropic degenerative change. The intervertebral disc has a corresponding protrusion which is central to left paracentral. There is some compromise of the central canal and apparent displacement of the traversing cervical cord at this level. … the examinations are not appreciably or objectively changed between 12/12/97 and 10/23/2001 . Meunier

finds an extruded disc fragment, and explains that the difference between this and a disc herniation is "a semantic difference that really has no importance in this situation…" Believes the hernia pre-existed the slip and fall incident of 2001.

- Ltr from Hacker to Atty Jacqueline Jacobson, disagrees with Munier. 2/20/2003 . "… it appears that both radiologists and myself have a different opinion than Dr. Munier in regard to the significance of the disc herniation and significance of the disc herniation and its size." Munier's "characterization … appears quite incorrect." (NOTE: this must mean, it's gotten worse, after all.)

Ltr: 2/25/2003: Atty for Ed, Welch, requests to Liberty that it accept herniated disc C4-5 as directly caused by injury of Nov 4, 1989 or as having developed as consequence thereof.

- 3/20/2003 MRI cervical spine. Findings: "Mild degenerative disk disease from L3-4 through L5-S1; Minor posterior disk bulges/osteophytes at L3-4 and L4-5; consequent compromise at the neural foramina at L4-5, more pronounced on the right. There may be impingement upon the existing portion of the right L4 nerve root." Dr Greg Bear.
- Hacker, note: 4/15/2003: "His most recent MRI study performed 3/22//2003 sho2ws some straightening of the cervical spine and degenerative disc changes at C3-4 and C6-7 with minimal if any canal stenosis…. Suspect persistent changes, perhaps with an underlying myelopathy without clear-cut ongoing compression."
- Ltr referral to Dr Lippincutt: is this a myelopathy? Notes MRI Nov 2001
- Fax cover sheet to LNW from Haacker: refers to C-MRI of 3-20-03
- Lippincott exam 4/30/2003: "chronic cervical spondolysis with history of cervical fusion at C5-6 on 1998 and C4-5 in 2002 … A recent MRI study, however, does not show signs of compression of the spinal cord or exiting nerve roots. While the deep tendon reflexes are symmetrically brisk in four limgs, I do not see any other signs to suggest active myleopathy. I also do not see signs on examination to suggest an intracranial abnormality. Lumbar spondylosis… no signs of active radicular disease or lumbar stenosis. Poor endurance in the legs could, however, be related to lumbar stenosis. An MRI scan of the lumbar spine in Feb 2002 showed only mild stenosis

at L3-4. Remote closed head injury in 1989. An MRI scan in 1991 did not show any signs of structural abnormalities of the brain." (NOTE: How interpret all this? Head injury but not affect brain?)

Ltr to Ed from Liberty: 5/23/2003 Claim Denial Ltr, re injury 11/4/89; Denial of C4-5 disc herniation as result of off work activities or result of new injury while employed with a new employer. (NOTE: what new employer, they still insurer for Georgies)

Insurer's Rpt - 5/27/2003, partially denied

Ltr to Own Motion Unit at WCB from Liberty 6/13/2003 : our position is that this motion "is actually a new, but unrelated condition, and therefore, continue to recommend denial of reopening for Own Motion benefits. "Carriers Own Motion Recommendation form" says claimant submitted claim for a compensable new medical condition or omitted medical condition and the claim was initiated after expiration of aggravation rights" .. (NOTE: wow, so it was compensable?) At this point, accepted are: cervical strain, C5-6 herniation; C4-5 herniation not accepted.

8/12/2003, Theuson: Workers and Physicians Report for W/C Claims – "cannot lift greater than 20 pounds occasionally. Limit standing or walking," Has the injury/illness caused permanent impairment? Answer: Yes.

- MRI lumbar spine 8/19/2003: Mild degenerative disk disease from L3-4 through L5-S1; minor posterior disk bulges/osteophytes at L3-4 and L4-5; consequent compromise at the neural foramina at L4-5, more pronounced on right. There may be impingement upon the exiting portion of the right L4 nerve root.. Dr Greg Bear
- 9/20/2003 Medical History Summary thus far
- Ltr by Hacker to Ada Wainmayer, WC Division, "I expect that Mr. Johnston will likely have a lifetime problem with cervical myelopathy. 11/5/2003

Ltr by atty Welch to atty Curey (Liberty) 4/12/04 modify possible settlement, delete the carpal tunnel reference (NOTE: Ed very unhappy; he never agreed to this settlement.)

Ltr by Welch to Ed: Concern re claim by Pacific Source for $30k med costs, would render settlement meaningless. Says they do not have a remedy because it is under ERISA. 4/23/04

STIPULATION: 2/4/05: Liberty accepts C4-5 herniation

3/2/05 Ed ltr to WC Bd, I was compelled to sign the Stipulation, wanted much more compensation.

Note to Liberty NW, from Hacker: "I don't think he can return to any vigorous demand job with cervical myelopathy." 3/4/05

Modified Notice of Acceptance, from Liberty , now accepts "Cervical and lumbar strain, C4-5 disc herniation" (adds 4-5 hernia, I guess) 3/4/05

3/7/05 Check to Ed for $9,847. No explanation of how calculated.

3/21/2005 Order of Abatement. References Ed ltr, 14 days to attys to respond.

- Diagnostic Imaging Rpt, 3/30 date visit, signed 4/06/05 Dr. Bear: MRI cervical spine, found: "Multi-level fusion; Posterior disk bulges/osteophytes at most cervical levels" – C3-4, C4-5, C5-6, C6-7 – more pronounced to left of midline. There is resultant mild to moderate stenosis… There is also encroachment on numerous neural foramina, most severe on the left at C6-7. Correlate with clinical evidence of compression of the left C7 nerve root. There may also be impingement of the left C4 through C6 nerve roots."
- Diagnostic Imaging Rpt, 3/30 date visit, signed 4/06/05 Dr. Bear: MRI lumbar spine, found: T12-L1, mild posterior disk bulge/osteophyte, with mild spinal stenosis. L3-4, mild broad-based posterior disk bulge/osteophyte with mild spinal stenosis. Nerve root exists freely. L3 nerve exists without impingement. L4-5 mild posterior disk bulge/osteophyte. No significant compromise at the spinal canal. There is mild encroachment on the neural foramina, without definite root impingement. L5-S1, degenerative changes in the facet joints.
- Ltr to Tracy at Liberty from Theuson. Found 41% impairment. Estimated 60% of problem is from his injury, rest, degenerative or from prior injury. "The worker is not able to do the work

he used to do prior to his injury. He is capable of reduced work hours with different work duties. He is able to lift 5 lbs continuously, 10 lbs occasionally, 25 lbs rarely. (Also limits against work that "requires stooping, bending, crouching, crawling, kneeling, climbing, balancing. He has significant limitations in twisting, reaching, pushing, pulling as well." (This is undated, but states it is after seeing Ed March 18 and 31st)

Ltr to Bar Assn, by atty Welch. March 31, 2005 . Good SUMMARY of events.
Ltr from Ed to John Schiltz, WC Director, and ALJ Hoquet, system has failed me; notes mysteriously disappeared medical evidence. April 17, 2005

4/25/05 Ltr from Curey to ALJ: let the Dismissal stand, he's got his C4-5 acceptance.

5/2/05 Ltr by Ed to Liberty , 2nd atty (atty for Welch): protest characterization of injuries as non-disabling, request reclassification. Also, evidence attached shows injuries were disabling well before March 4, 2005 , and have been aggravated since then. (Partial summary of history via summary of attached evidence).

- Star Medical exam: Paul Williams, MD exam 4/22/05 INCLUDES LIST OF MRIs AND X-RAYS. Finds him medically stationary for accepted conditions. "There is no permanent impairment associated with a cervical or lumbar strain due to range of motion." "May lift occasionally 50 pounds frequently, more or less weight." Directly contradicted Theuson limitation list of March 18, 31 exams. "There is no impairment related to a cervical or lumbar strain. The C4-5 disc herniation has been accepted as it relates to the work related event of 07/28/01 , and apparently was 100% caused by the work activity of 07/28/01 . There is impairment associated with the C4-5 disc herniation." (Note: point is, to avoid saying there was an injury from the original injury, it seems.) "Mr. Johnston will likely experience intermittent and transient increase in neck pain."
- 5/2/05 , Please Rush faxed ltr to Theuson from Tracy at Liberty . Do you concur letter. Enclosed is report from Star Medical exam. Theuson does not concur.
- 5/5/05 Ltr to Liberty , from

Theuson. “Yes, I would consider his acute lumbar/cervical strain with C4-5 cervical disc herniation medically stationary as does your IME.” Finds Ranges of Motion not norma, indicate “a whole person impairment of 41%,” and agrees with IME this is not normal for this person, and “at least in his neck is obviously due to his injury and subsequent surgery. This should be attributed to the herniated disc which is what the final diagnosis was concerning his injury rather than the original diagnosis of cervical strain only. … I would estimate that 60% + of his problem is from the injury and the rest is degenerative or pre-existing from prior injury. Your IME felt the herniated disc was 100% caused by his more recent work injury so this leads to 60%+ that this injury is the main cause of his current condition.” Patient says can sit ½ hr, stand or walk 10 min., but Theuson disagreed. “Objectively it would seem he is more capable than this but if his fatigability is accurate then he should not be expected to work in any task that requires stooping, bending, crouching, crawling, kneeling, climbing, balancing. He has significant limitations in twisting, reaching, pushing, pulling as well.” Deems him “medically stationary with residual impairment.”

Insurers Report 5/18/05 Accepted, disabling, injury, aggravation First report of aggravation 2/22/2005

Modified Notice of Acceptance: “accepted conditions: cervical and lumbar strain, C4-5 disc herniation. Reopened for the following Conditions: C4-5 disc herniation.” Date of injury 7/28/01. Classified as Disabling. Dtd 5/18/2005

Insurer Notice of Closure Summary 5/18/05 restricted duty

Updated Notice of Acceptance at Closure dtd 6/15/2005: (repeats above except for box stating it is disabling).

Notice of Closure Worksheet: 46% re neck, total dollars $34,027. 6/15/05

Notice of Closure 6/15/05. Became medically stationary 12/16/02; aggravating rights end 7/28/06. 46% disability, $34,027.

Statement/Request. To Liberty from WC Div. (Hand

figures, it should have been $32,043.) 6/21/05

Insurer Notice of Closure Summary: dtd 6/21/2005

Liberty: Rescinding Notice of Closure: replaces prior Notice of Closure. 42%, dollar amount of disability is $28,619.77 Dtd 6/21/05

Ltr from WC Div to Liberty: June 21 Notice of Closure not meet statutory requirements – wrong form, provided no medically stationary date of aggravation rights end date; no form 2807 (Notice of Closure Worksheet) or Updated Notice of Acceptance at Closure provided. Dtd 7/5/05

Notice of Closure Worksheet 7/22 – 42% disability.

Updated Notice of Acceptance at Closure: accepted conditions: cervical & lumbar strain, CA-5 herniation (sic) Reopened for C4-5 disc herniation.

Notice of Closure 7/25/05. 42% disability = $28,619.77, med stationary 12/16/02, aggravation rights end 7/28/06

Insurer Notice of Closure Summary 7/25/05 Total medical costs paid $25,312.92 time loss paid $9,847.

Ltr to Ed, from WC, Medical Reviewer Jean Zink. Information needed for processing of medical reimbursement missing.

Worker Request for Reconsideration: Objected to everything, re claim Notice of Closure 7/25/05 . Dated 9/21/05

10/5/05 Liberty fax to Theuson. Do you confirm he was med stationary 12-16-02. Answer: No … "12/02 was 'guesstimate … [unclear] he was medically stationary as date May 5, 2005 ." Dated 10/5/2005