McCREADY, GARCIA & LEET, P.C.
PERSONAL INJURY & WORKERS' COMPENSATION ATTORNEYS

CHICAGO, ILLINOIS
10008 S. Western Avenue | Chicago, Illinois 60643
Office: 773.779.9885 | Fax: 773.779.9190

CHESTERTON, INDIANA
709 Plaza Drive, Ste. 1 | Chesterton, Indiana 46304
Office: 219.213.6333 | Fax: 773.779.9190

February 11, 2016

VIA OVERNIGHT MAIL

My Client:
Your Insured:
Claim #:
Date of Loss: October 24, 2015

TIME-SENSITIVE DEMAND

Dear Ms. Zarcone:

On October 24, 2015, our client, _____, was permanently disabled trying to get down off a stage inside your insured's business. She suffered a Lisfranc ligament tear and ankle frcture requiring ORIF surgery – the records indicate "***her left foot will never be like it was pre-injury.***"

Ms. Garcia went to a Halloween party being hosted at your insured's business. She had been at the club for about 30 minutes when she dismissed herself from her group of friends to go to the restroom. To get to the restroom from where she and her friends were sitting, she had to pass in front of a stage that the DJ, Gerardo Cambray, who was acting as the MC for the party, was standing on to entertain the crowd. The DJ was also using the stage for a costume contest and was bringing people in costumes up from the crowd in front of the stage.

As she was walking past the stage, trying to make her way to the restroom, the DJ suddenly reached down and extended his hand to her, and everyone started cheering. She wasn't in a costume, but assumed she must have won something. Before she knew what was going on, the DJ had been pulled her up onto the stage which was elevated approximately 24" off the floor (this is a picture of the stage from a different event).

As soon as she was up on stage, she felt uncomfortable and told the DJ that she wanted to get down. There weren't any stairs, so the only way to get off the stage was the same way the DJ pulled her up – straight down. Someone in the crowd saw her struggling to get off the stage and tried to assist by holding onto her arm as she, but it was dark, and it was a significant vertical drop to the floor, and she ended up rolling her ankle getting down (at approximately the 5:12 mark in the attached video, you can see how the DJ pulled someone up on stage at a previous Halloween party at Las Fuentes).

She fell to the floor and several people helped her get back up on her feet, including the gentleman who tried to help her get down. She initially thought she twisted her ankle and limped her way to the restroom, and then limped her way back to her group of friends. She found a place to sit down, and then someone brought her some ice which she kept on her ankle until she left to go home a little while later (the person who tried to help her get down came up later and gave our client his contact information in case she needed him as a witness at a later date).

LIABILITY

Even if the DJ here was an independent contractor, your insured still owed its patrons, including Ms. Garcia, a duty to exercise reasonable care for their safety and well-being. There is an overwhelming amount of historical video evidence online to show that your insured permitted these types of events to go on in the past. There are videos online from 3 years prior to Ms. Garcia's injury showing patrons being pulled up onto the same overcrowded stage.

Section 414 of the Restatement (Second) of Torts, which is followed by the Illinois courts, states:

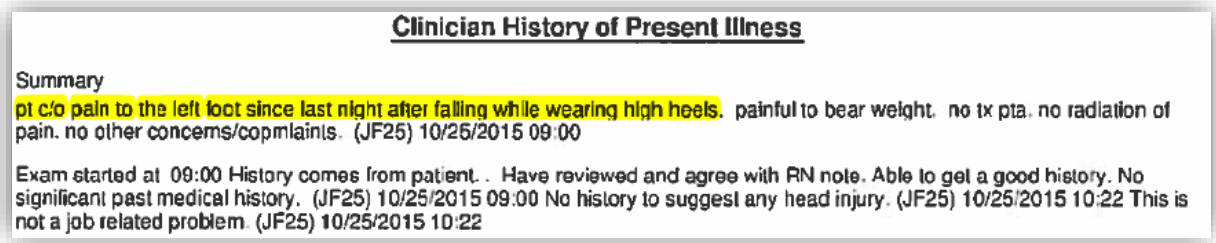
> **One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.**

There can be no argument that your insured retained the requisite level of control for this event for liability to attach.

DAMAGES

<u>October 25, 2015 – MacNeal Hospital</u>

Ms. Garcia initially thought she had sprained her ankle, so she just went home after leaving your insured's business, but when she woke up the next morning her ankle was really swollen and she was in even more pain. She knew something was wrong so she went to the Emergency Department at MacNeal Hospital to get it checked out.



Clinician History of Present Illness

Summary

pt c/o pain to the left foot since last night after falling while wearing high heels. painful to bear weight. no tx pta. no radiation of pain. no other concerns/copmlaints. (JF25) 10/25/2015 09:00

Exam started at 09:00 History comes from patient. . Have reviewed and agree with RN note. Able to get a good history. No significant past medical history. (JF25) 10/25/2015 09:00 No history to suggest any head injury. (JF25) 10/25/2015 10:22 This is not a job related problem. (JF25) 10/25/2015 10:22

X-rays were taken at the hospital which revealed several metatarsal fractures. Her foot was put in a splint and she was discharged on crutches with instructions to follow up with a podiatrist.

Progress Notes

+ fractures of the metatarsals. pt advised that she'll need f/u with podiatry and possible MRI. pt to RICE and remain non-weightbearing until she sees the podiatrist. pt to return for wrose pain/swel ng/redness/symptoms. pt states understanding and questions answered.
(JF25) 10/25/2015 10:27

Primary Diagnosis

Metatarsal bone fracture (JF25 10/25/2015 10:26)

She called your insured when she got home from the hospital to advise what had had happened, and she was told that the DJ had already reported the incident. Ms. Garcia believes the DJ might have some kind of ownership interest in the business.

October 29, 2015 – Midwest Podiatry Services – Dr. Michael Brown, DPM

Ms. Garcia followed up at Midwest Podiatry Services, on October 29, 2015, and met with Dr. Micahel Brown. She explained that she had rolled her foot after missing a step that "was quite significant." The step she missed was actually the 24" from the stage down to the floor. She explained to Dr. Brown that she was experience a significant amount of pain across the top of the middle of her left foot which was preventing her from putting any weight on it.

Reason for Appointment
1. Pt presents with left foot pain after falling injury last saturday.
2. PCP:Dr @ Access Medical Center
3. Date last seen: 04/2015

History of Present Illness
WFAI:
Patient presents today with a chief complaint of a trauma to her left foot. Patient states on Saturday she was out at a dance club and subsequently she rolled her left foot and ankle after missing a step. States that the distance was quite significant. She was able to ambulate on it afterwards although when she woke up the next morning she had significant pain as well as swelling. She presented to the emergency department at McNeal Hospital relate x-rays and diagnosed her with a fracture of her left foot. Patient presents today with a posterior splint as well as crutches. She is attempting to put no weight on the left foot although she states when she has there is a lot of pain across the middle aspect of the left foot. She denies any previous traumatic injury to her left foot.

Dr. Brown reviewed her x-rays and assessed a "left Lisfranc dislocation" and advised that she would need to get a MRI of her foot so he could further evaluate the extent of the injury to the left Lisfranc complex. Dr. Brown also advised her of the seriousness of her injury and told her that she would likely need to have surgery.

X-Ray Findings:
3 views of the left foot were taken and reviewed: There does appear to be some diastases between the base of the first and second metatarsal as well as the medial cuneiform. Oblique x-ray shows no significant fracture subluxation. No other acute fractures present.

Assessments
1. Lisfranc dislocation, left, initial encounter - S93.325A (Primary)
2. Pain in left foot - M79.672

Treatment
1. Lisfranc dislocation, left, initial encounter
Notes: I have discussed my findings in detail with the patient. Due to the fact that there is some abnormality with the x-rays I'm recommending an MRI to evaluate the Lisfranc complex on the left foot. Did discuss with the patient following the results of this we will have a further discussion as far as treatment plan going forward. Did discuss with her this is a potential for a surgical intervention and she is understanding of that. She will follow up with me after she obtains the MRI for further management. I have applied the posterior splint to the left foot and leg. I have advised the patient to continue to elevate as well as ice the left foot. She is to remain nonweightbearing.

November 6, 2015 – Rush Oak Park Hospital

Ms. Garcia followed up at Rush Oak Park Hospital on November 6, 2015 to get the MRI that had been ordered by Dr. Brown.

TECHNIQUE:
Multisequence, multiplanar MR images of the left forefoot were obtained without contrast.

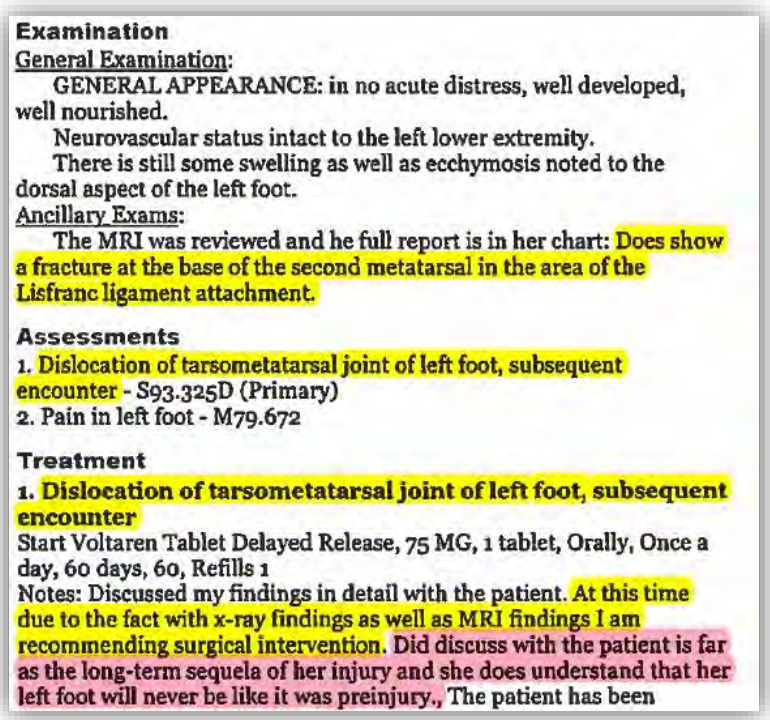
FINDINGS:
There is increased signal at the proximal base of the second metatarsal with linear T1 hypointense signal and a slight cortical step-off, findings consistent with fracture and injury to the distal aspect of the Lisfranc ligament. There is increased T2 signal to the base of the fourth metatarsal. Given the difficult positioning, no definite T1 correlate is seen. There is also increased marrow signal to the lateral aspect of the cuboid.

1. Limited study.
2. There is a fracture at the base of the second metatarsal with likely injury to the distal aspect of the Lisfranc ligament.
3. Increased signal at the base of the fourth metatarsal also likely represents a fracture. Correlation with radiographs is recommended.
4. Contusion of the lateral aspect of the cuboid.
5. Moderate osteoarthritis of the midfoot.
I, Gregory White, M.D., have personally reviewed and interpreted the images of this study. In addition, I have personally reviewed this report and concur with its findings and conclusions, as affirmed by my electronic signature.

The MRI revealed several metatarsal fractures, as well as injury to the distal aspect of the Lisfranc ligament.

November 9, 2015 – Midwest Podiatry Services – Dr. Michael Brown, DPM

Ms. Garcia followed up with Dr. Brown to go over her MRI. Dr. Brown explained to her that she had indeed suffered a Lisfranc injury – a dislocation of the tarsometatarsal joint of the left foot – and advised that she would need surgery. Dr. Brown went on to break the news to Ms. Garcia that her left foot would never be the same again – **"her left foot will never be like it was pre-injury."**



Examination

General Examination:

GENERAL APPEARANCE: in no acute distress, well developed, well nourished.

Neurovascular status intact to the left lower extremity.

There is still some swelling as well as ecchymosis noted to the dorsal aspect of the left foot.

Ancillary Exams:

The MRI was reviewed and he full report is in her chart: Does show a fracture at the base of the second metatarsal in the area of the Lisfranc ligament attachment.

Assessments

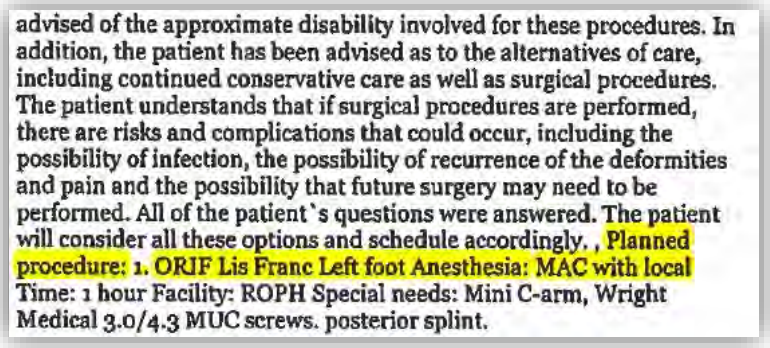
1. Dislocation of tarsometatarsal joint of left foot, subsequent encounter - S93.325D (Primary)
2. Pain in left foot - M79.672

Treatment

1. Dislocation of tarsometatarsal joint of left foot, subsequent encounter

Start Voltaren Tablet Delayed Release, 75 MG, 1 tablet, Orally, Once a day, 60 days, 60, Refills 1

Notes: Discussed my findings in detail with the patient. At this time due to the fact with x-ray findings as well as MRI findings I am recommending surgical intervention. Did discuss with the patient is far as the long-term sequela of her injury and she does understand that her left foot will never be like it was preinjury., The patient has been



advised of the approximate disability involved for these procedures. In addition, the patient has been advised as to the alternatives of care, including continued conservative care as well as surgical procedures. The patient understands that if surgical procedures are performed, there are risks and complications that could occur, including the possibility of infection, the possibility of recurrence of the deformities and pain and the possibility that future surgery may need to be performed. All of the patient`s questions were answered. The patient will consider all these options and schedule accordingly. , Planned procedure: 1. ORIF Lis Franc Left foot Anesthesia: MAC with local Time: 1 hour Facility: ROPH Special needs: Mini C-arm, Wright Medical 3.0/4.3 MUC screws. posterior splint.

Dr. Brown scheduled the surgery to be performed at Rush Oak Park Hospital on November 17, 2015.

November 17, 2015 – Rush Oak Park Hospital – Dr. Michael Brown, DPM

Ms. Garcia returned to Rush Oak Park Hospital on November 17, 2015 to have open reduction internal fixation surgery to repair the injury to her left foot.

PREOPERATIVE DIAGNOSES:
1. Lisfranc dislocation, left foot (S93.325A).
2. Pain in left foot (M79.672).

POSTOPERATIVE DIAGNOSES:
1. Lisfranc dislocation, left foot (S93.325A).
2. Pain in left foot (M79.672).

PROCEDURE:
Repair of foot dislocation (28615).

INDICATIONS:
This is a pleasant female who presents today for surgical correction secondary to a traumatic injury to her left foot.
The patient underwent an MRI, which showed a tear of her Lisfranc ligament

with instability. Discussed with the patient as far as conservative versus surgical option. Given the fact that the instability, my recommendation is surgical intervention and she agrees to go along with this. I did discuss with the patient as far as long-term sequelae of her significant injury and she understands that. All risks and complications have been discussed with her in detail. No guarantees have been given as to the outcome of the procedure.

PROCEDURE IN DETAIL:
The patient was brought to the operating room, placed on the operating table in supine position. Next, left lower extremity was prepped, scrubbed, and draped in the usual aseptic manner.

Attention was directed over the proximal first interspace, where a full-thickness skin incision was made down to the level of bone. Identification of the dorsal aspect of the base of the 1st and 2nd metatarsals was then identified, soft tissue in position, as well as fragmented ligaments were then excised utilizing a rongeur. Next, utilizing a bone reduction clamp, the first and second metatarsals were then reduced. Next, utilizing standard AO technique, a 4.3 MUC screw was then inserted into medial cuneiform extending to the base of the second metatarsal. Clamp was reduced and excellent reduction was noted. Next, for additional stability an intercuneiform screw was then placed from the medial cuneiform into the intermediate cuneiform. Multiple fluoroscopic imaging was then taken and excellent reduction was noted. Next, the incision was flushed with copious amounts of normal sterile saline. Incision was reinforced with Steri-Strips, followed by Adaptic, and a multilayer compression bandage with the posterior splint was then applied to the left lower extremity.

Following ORIF surgery, Ms. Garcia underwent physical therapy for several months, however, the hardware in her foot was causing her pain and discomfort, so it was determined that she would have to undergo an additional surgery to remove the hardware in her foot. .

February 26, 2016 – Midwest Podiatry Service – Dr. Michael Brown DPM

Assessments

1. Orthopedic device, implant, or graft complication - T84.9XXA (Primary)

Treatment

1. Orthopedic device, implant, or graft complication

Notes: Discussed my findings in detail with the patient. At this time I discussed with her about removal of her screws as she is healed at this point. She is already set up for surgery on March 11., The patient has been advised of the approximate disability involved for these procedures. In addition, the patient has been advised as to the alternatives of care, including continued conservative care as well as surgical procedures. The patient understands that if surgical procedures are performed, there are risks and complications that could

March 11, 2016 – Rush Oak Park Hospital – Dr. Michael Brown DPM

On March 11, 2016, Ms. Garcia underwent a second surgery to remove the painful hardware in her foot.

DATE OF PROCEDURE:
03/11/2016

ATTENDING SURGEON:
Michael Bowen, DPM

FIRST ASSISTANT:
Kellen Cohn, DPM, PGY-3.

PREOPERATIVE DIAGNOSIS:
Painful retained orthopedic hardware, left foot x2. (T84.9XXA)

POSTOPERATIVE DIAGNOSIS:
Painful retained orthopedic hardware, left foot x2. (T84.9XXA)

PROCEDURES:
1. Removal of screw, left foot Lisfranc (20680).
2. Removal of screw intercuneiform, left foot (20680-59).

Ms. Garcia underwent 12 weeks of physical therapy following the second surgery, but was still left with a permanent "loss" of function in her left foot. She continues to struggle with navigating stairs, and continues to suffer chronic post-traumatic pain from midfoot arthritis – that will continue to get worse in the future. She also still faces the very real prospect of having to undergo fusion surgery in the future.

DEMAND

The purpose of compensatory damages is to make an injured party whole and restore him/her to the position they were in prior to the loss. *Harris v. Peters*, 274 Ill.App.3d 206 (1995). Ms. Garcia suffered a devastating injury requiring 8 months of treat, including 2 surgeries, leaving her with a permanent disability of the left ankle that may require additional ankle arthrodesis (fusion) surgery in the future. In *Dillon v. Evanston Hospital,* 772 N.E.2d 357 (2002), the Illinois Supreme Court expanded the liability of negligent defendants to include damages for an "increased risk of harm for future injury not reasonably certain to occur."

Enclosed are the past medical records and records of past economic damages for Ms. Garcia. I have also included the cost of arthrodesis as an "increased risk of future harm" that she now faces as a result of your insured's negligence. Under Illinois law, we do not need to prove increased risk of future harm in order to collect damages for the increased risk. Also, the included specials do not account for any of her non-economic damages (pain & suffering, loss of normal life, etc.).

MacNeal Hospital	$11,359.95
CEP America	$411.00
Metropolitan Advanced Radiological	$48.00
Midwest Podiatry Services	$8,060.00
Rush Oak Park Hospital	$25,762.71
Scheck & Siress	$682.00
TOTAL	**$46,323.38**
Lost Wages (8 months @ $15.00 hr)	
TOTAL	**$20,800.00**
Future ankle arthrodesis surgery (global estimate)	
TOTAL	**$75,000.00**
TOTAL PAST & FUTURE ECONOMIC DAMAGES	**$142,123.38**

If this matter is forced to litigation, we will ask a jury to consider each of these separate compensable elements of damages:

- **Past Loss of Earnings**
- **Future Loss of Earnings**
- **Past Medical Expenses**
- **Past Necessary Help**
- **Future Medical Expenses**
- **Risk of Harm**
- **Past Emotional Distress**
- **Future Emotional Distress**
- **Past Pain & Suffering**
- **Future Pain & Suffering**
- **Past Loss of Normal Life**
- **Future Loss of Normal Life**
- **Disfigurement**
- **Permanent Disability**

Based on the liability and damages, I am demanding you tender a release for your insured's policy limits by Friday, March 3, 2017 to settle Ms. Garcia's claim against your insured.

The Illinois Supreme Court has held that an insurer and/or third-party administrator violates the duty of good faith and fair dealing when it fails to comply with the time limitations imposed on a demand. *See Haddick v. Valor Ins. Co*., 763 N.E. 2d 299, (2001).

I look forward to working with you to get this matter resolved amicably, and expeditiously.


GERARDO CAMBRAY, PRESENTA
FESTIVAL DE HALLOWEEN
SABADO 24 DE OCTUBRE 2015
Miller Lite
$500 EN EFECTIVO PARA
LAS MEJORES MASCARAS Y DISFRACES
23 AÑOS EL MEJOR FESTIVAL
DE HALLOWEEN EN CHICAGO MAS DE
600 DISFRACES Y MASCARAS
La Pachanga Club
2558 N. HALSTED AVE.
SABADO 24 DE OCTUBRE 2015


THE THRILLER SHOW
GERARDO CAMBRAY PRESENTS
HALLOWEEN FEST 2015
Miller Lite
SATURDAY OCTOBER 24
FOR 23 YEARS THE BEST HALLOWEEN FEST
IN CHICAGO
Music By
Gerardo Cambray
$500 FOR THE BEST COSTUMES & MASK
SATURDAY OCTOBER 24
LA PACHANGA CLUB
2558 N. HALSTED / 773.419.8645


GERARDO CAMBRAY, PRESENTA
SABADO 24 DE OCTUBRE
FESTIVAL DE HALLOWEEN
CADA AÑO CRECE MAS Y MAS
EL FESTIVAL DE HALLOWEEN,
GRACIAS A LA MOTIVACIÓN
DE TODOS LOS PACHANGUEROS QUE
TRAEN SUS GRANDES DISFRACES
Y MASCARAS ORIGINALES
POR MAS DE 23 AÑOS.
EN VIVO
THE TRILLER SHOW
$500 PARA LOS
MEJORES DISFRAZES
Y MASCARAS
SABADO 24 DE OCTUBRE
Miller Lite
THE BEST MUSIC BY
GERARDO CAMBRAY
LA PACHANGA
2558 N HALSTED AVE / 773.419.8645