

The Trial of a Soft Tissue Knee Injury Case

By Ben Rubinowitz and Evan Torgan

Although often overlooked as commonplace or insignificant, an injury to the knee joint often results in a severe, permanent disability and a lifetime of pain. When such an injury is the subject of a personal injury case, the trial attorney's task is to demonstrate that devastation to a jury. From opening statement through summation, proving the nature and extent of the injury to the finder of fact is both critical and relatively straightforward.

The Opening Statement and the Anatomy

The opening statement has to lay out both the general anatomy and specific injury to the jury:

“To understand how the injury affected the man, you have to understand the anatomy involved, as well as the specific injuries. James Jones sustained basically three injuries to his right knee: a torn medial meniscus, chondromalacia and a partial tear of the anterior cruciate ligament. To have a good idea of what these injuries mean, we have to first discuss the normal anatomy.

The knee joint is what's known as a hinge joint. It is formed by the meeting or articulation of two large bones: the femur, or thighbone, the longest bone in the body; and the tibia or shinbone, a relatively long bone as well. The upper bone or femur, at its lower end has what are known as the femoral condyles. These condyles fit into the grooves created by the meniscus or cartilage of the knee. Below the condyles and the meniscus is the top of the tibia, known as the tibial plateau. The knee is held together by four ligaments, which are like rubber bands which connect from bone to bone: the anterior cruciate ligament in the front center, the posterior cruciate ligament to the rear center and the collateral ligament on the inner side of the

joint known as the medial collateral ligament, and the outer ligament or the lateral collateral ligament. The collateral ligaments give the joint stability from side to side; the cruciate ligaments give stability forward and rear. There are two menisci or menisci which we commonly refer to in lay terms as cartilage. These cartilagenous cushions work as shock absorbers of the knee joint: they protect the bones – the tibial plateau and the femoral condyles – from grinding against each other and allow the knee to flex and bend and withstand the forces of walking, running, jumping and bending. Without these menisci, the knee would become totally arthritic with bone constantly rubbing against bone. The one thing that we haven't touched upon is the front of the knee joint where there is a covering called the patella, commonly known as the knee cap. The knee is the largest weight-bearing joint in our body. So any injury to that area can not only cause severe pain, but inability to walk or sit or bend.

So let's talk about the injuries: The torn meniscus or cartilage between the tibia and femur is quite severe. It is torn from its center up to the outer edge heading up toward the femoral condyles on the medial or inner side. Because it lies between these two large bones and is subjected constantly to the forces of walking and bending, it is now degenerative in nature. It tears more and more as Mr. Jones uses his knee. Because it has no significant blood supply to begin with, it cannot heal itself or regenerate. Thus, that meniscus is damaged forever. It will never get better. That cartilage was torn during the car accident. When Mr. Jones was broadsided, it caused the twisting of the femur over the tibia in a grinding motion and caused the tear. It is extremely painful.

Not only did he twist his knee, but he banged the front of that knee on the underside of the dash board. So that the knee cap or patella was severely bruised. That bruise healed, but what didn't heal was the underside of the patella where the articular cartilage became

softened and chopped up. That is what is known as chondromalacia. That is a particularly painful condition when he is forced to confront staircases and inclines. There is no cure for that other than surgical debridement or removing the dead and damaged tissue, by scraping the underside of the kneecap.”

Expert Testimony

Typically, the start of your direct examination will be spent bringing out the expert qualifications of the testifying orthopedist, going into such basic areas as where he attended medical school, did his internship and residency, attained board certifications and current hospital affiliations and areas of practice. Keep in mind, however, you do not want merely to qualify your witness as an expert. You want to convince the jury that there is no more qualified medical doctor to give an opinion regarding your client’s knee injury. Qualify him not just as an expert in orthopedics, but as an expert in knee injuries:

Q: Please describe your current practice.

Q: How many patients with knee injuries have you treated?

Q: How many surgical procedures have you performed on knees and knee joints?

Q: How many patients have you treated conservatively for knee injuries?

Q: Approximately how many patients you have treated post-surgically for knee problems?

Next, show the jury that he is not just an expert in injuries of the knee in general, but in the specific injuries your client has sustained:

Q: Assuming a radiologist has already testified to findings of chondromalacia, torn medial and lateral menisci and a partial tear of the anterior cruciate ligament, I want to ask you the following questions:

How many patient have you treated with torn medial and lateral menisci? Tears of the anterior cruciate ligament? Chondromalacia?

Q: How many with a complex of all those injuries?

Then undercut the potential collateral attack of your expert by bringing out his prior testimony in other cases. But do not be defensive about it as the following illustrations reveals:

Q: Are you being paid today?

Q: How much?

Q: Have you testified in court before?

Q: How many times?

Q: Were you paid each time?

Q: Have you testified for me before?

The foregoing is too defensive. It does not help your cause. You might as well have said: "Tell us, Doctor: How often do you testify in exchange for money?" Instead, embrace the expert's prior testimony. Imply that only very qualified and accomplished physicians testify so often in courts of law. Show the jury you are proud to put on such an accomplished witness. Use his prior testimony as a sword, rather than being ashamed of it:

Q: Dr. Smith, prior to today, have you been qualified as an expert in orthopedics in the courts of the State of New York?

Q: Approximately how many times have you been so qualified as an expert?

Q: Have you been qualified as an expert in orthopedics in the courts of other states?

Q: What other courts have you been qualified to give expert testimony in?

Q: And each time were you compensated for your time in court and away from your patients and the operating room?

The next area to question on is how the physician got involved in the case. Obviously, it is much more convincing to bring in a treating physician rather than a lawyer-retained expert. Where the treating doctors are uncooperative, the examination should go something like this:

Q: Dr. Smith, did there come a time that my office retained you for the purpose of examining my client, James Jones?

Q: When was that?

Q: Did we provide you with certain medical documentation?

Q: Please tell the jury what that was.

Obviously, if the direct went more like this, by calling a treating physician, the examination would be much more compelling:

Q: Dr. Smith, can you describe to the court and jury how you got involved with the care and treatment of your patient, my client, James Jones?

A: Yes, of course. Mr. Jones came in to the emergency room where I was the orthopedist on call.

Q: What were his problems or complaints at that time?

A: Well, he gave a history of being rear-ended in a motor vehicle accident. He said his right knee was in severe pain.

Q: What else did he say with respect to his knee injury?

A: He said his knee twisted and then struck the dash board of his car.

Q: What did you do next?

A: I examined him, performed some clinical diagnostic tests, and based upon that clinical exam I sent him for x-rays.

Q: What did your clinical exam consist of?

A: I palpated or touched the areas injured. I performed a test known as McMurray and pressed on the knee cap. He responded with pain on both tests.

Q: Can you describe the McMurray test?

Q: Did you come to a working diagnosis at that time?

Q: What was that diagnosis?

A: Based upon the pain in his knee cap or patella from pressing on it, I felt he may have traumatic chondromalacia. Based upon the McMurray test, I thought he probably had some torn cartilage as well.

Q: I will ask you to define those terms later, but first tell us why you sent him for x-rays.

A: I thought he had some severe injuries to the soft tissues in his knee but I sent him for x-rays to rule out any fractures in or around the knee joint.

Q: What did the x-rays show?

A: They were negative for fracture.

Q: What did you do next?

A: I referred him back to radiology for an MRI of his knee.

Q: Did you read those MRIs yourself?

Q: What did they show?

A: A torn lateral meniscus. A torn medial meniscus. A partial tear of the Anterior Cruciate Ligament. Chondromalacia of the patella.

This is a good time to go into the anatomy where you can actually demonstrate normal anatomy to the jury and then describe pathological anatomy. Anatomical charts and models are critical for this part of the examination. Once admitted into evidence, they can be used throughout the trial, for further direct examination of experts as well as for cross examination of opposing experts. The foundation for anatomical charts and models is simple:

Q: First, Your Honor, could we have this marked for identification as plaintiff's Exhibit 1. Do you recognize plaintiff's 1 for identification?

Q: What do you recognize it to be?

Q: Is this model of the knee anatomically correct?

Q: Would it aid you in explaining, and the jury in understanding, the parts of the anatomy injured in this case?

Q: I offer it in evidence, Your Honor.

Now, let the expert go into teaching mode by changing the courtroom dynamics. Ask the court if the witness can step down in front of the jury rail to demonstrate the anatomy and injury to the jury. Have him point out the femur or thighbone, the longest bone in the body. Have him show the bottom of the femur, and the manner in which the femoral condyles articulate or meet the knee joint. Then have him point out the tibia or shinbone, particularly pointing out the top of the tibia where the tibial plateau forms the bottom portion of the knee joint. Have the doctor point to the medial meniscus or inner cartilage and lateral meniscus or cartilage toward the outside of the joint between the femoral condyles and the tibial plateau. Ask him the function of the cartilage in shock absorption, lubrication, cushioning and bending. Have him explain the consequences of the injuries, and the body's inability to regenerate new cartilage like other tissue. Have him tell the jury why the knee will become arthritic once the meniscus is damaged,

because the injury will lead to damage to the articular cartilage and bone rubbing directly on bone.

Then have the doctor show where the anterior cruciate ligament is within the model and how it is critical to stability, front and back. Have him further demonstrate the area behind the patella and how when it suffers a direct blow, it causes chondromalacia.

Opinions to a Reasonable Degree of Medical Probability or Certainty

A critical part of the direct examination is eliciting appropriate opinions from the orthopedist: opinions as to causation of injuries; opinions as to need for and cost of medical care; opinions as to pain and suffering and opinions as to permanency. When asking questions designed to bring out these opinions, it will be useful to restate important aspects of your proof, in the form of hypothetical questions:

Q: Doctor, I want you to assume that the proof in this case is that Mr. Jones was sitting in his car when he was struck by another vehicle from behind. The collision caused his knee to strike the dashboard. As a result, he experienced severe pain and swelling in his knee. Do you have an opinion, to a reasonable degree of medical certainty, as to whether the accident I described was a substantial factor in bringing about Mr. Jones' injuries, including the chondromalacia, the torn medial meniscus and the partial tear of the anterior cruciate ligament?

Q: Do you have an opinion, to a reasonable degree of medical certainty, as to what, if any, future medical treatment Mr. Jones will need as a result of these injuries?

A: Yes. He will need additional arthroscopic surgery as the meniscus further deteriorates. He has tri-compartment damage to his knee. Meaning he has three compromised areas in his knee. This will ultimately require a total knee replacement, probably once every ten

to fifteen years from the date of his initial replacement.

Q: Why do you say that?

A: Because these procedures last on average ten to fifteen years each before they wear out and fail.

Q: Do you have an opinion as to what, if any, other treatment he will need?

Q: Are you familiar with the costs of these modalities and treatments based on your experience of the last twenty-five years?

Q: Do you have an opinion to a reasonable degree of medical certainty as to what the present day value would be of those following costs: the future arthroscopies, the future total knee replacements and the physical therapy you told us he would need?

Q: Do you have an opinion, to a reasonable degree of medical certainty, of course, as to whether or not these injuries are permanent?

Q: Do you have an opinion, to a reasonable degree of medical certainty, as to whether these injuries are a competent producing cause of pain? Whether they will cause pain in the future? For how long into the future?

Conclusion

Soft tissue knee damage is a prevalent injury in personal injury cases. Therefore, learning the normal anatomy can be useful in many cases to come. A skillful opening statement detailing the normal anatomy and describing how the accident caused the pathologic anatomy is a critical step in persuading a jury to find in your client's favor. That, in combination with an artful direct of the orthopedic expert, can go a long way in proving the seriousness of your client's injury and portraying the damages in the case.

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