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## ■ BATTLE OF DOCTORS ■

### Defense wins in brain injury case

Despite diagnoses by 8 doctors, an Illinois jury doesn't buy brain claim.

By Margaret Cronin Fisk  
STAFF REPORTER

AN ILLINOIS CONSTRUCTION company has won a defense verdict in a \$10.5 million personal injury case by alleging that the plaintiff was a malingerer, despite separate diagnoses of "post-concussion syndrome" by eight doctors and a finding by the Social Security Administration that the plaintiff was disabled.

The defense turned the case around by using a defense neuropsychology expert's tests on the plaintiff, reported defense attorney John Bell of Chicago's Johnson & Bell. *Bowron v. Bolton Corp.*, No. 02 L 2316 (Cook Co., Ill., Cir. Ct.).

The defense also used CT scans and EEGs taken by the plaintiff's treating physicians to bolster the defense contention that he had not sustained a disabling brain injury, Bell said.

Plaintiff Steven Bowron and his wife, Laura, sued Bolton Construction after a January 1996 accident at a tunnel project in Morton Grove, Ill., a Chicago suburb. The construction crew was digging a tunnel 300 feet below ground when rocks fell from a vertical conveyer and hit Bowron. Struck on the head, neck and shoulders, he was diagnosed with a concussion.

A few weeks later, said Bell, Bowron was diagnosed with an organic brain injury and post-concussive syndrome. Doctors connected the brain damage to the construction accident. Bowron did not return to work. In 1997, he sued. Bolton disputed the claim, but the company's primary carrier, Reliance Insurance, which had filed for bankruptcy, settled for

\$300,000. Bell was called in to represent AIG, Bolton's excess carrier.

To dispute Bowron's claims and the doctors' diagnoses, Bolton hired a neuropsychologist, David Hartman, to go through all the tests taken by these doctors. In reviewing these tests, Bell said, Hartman "found marked discrepancies." For example, early in Bowron's treatment, he was hooked up to a 24-hour EEG monitor; Bowron would push a trigger each time he felt dizzy and the EEG would measure any changes in brain waves.

"The first time he did the test he triggered 12 times, but each time the EEG was showing normal brain waves," Bell said. Residual brain dysfunction can occur following an injury, even if an EEG does not confirm abnormal brain waves, Bell said. In these instances, neuropsychologists administer memory tests. Bowron was tested by the treating physicians, who concluded that he had sustained cognitive impairment as a result of the injury.

But before trial, Hartman administered three different memory tests to Bowron to determine whether he was malingerer. These tests showed, Bell alleged, that "he was intentionally exaggerating his symptoms" of memory loss. In the word-memory test, for example, Bowron's responses tested far lower than the responses from patients with severe brain injuries as well as from 8-year-old children and retarded adults.

"The plaintiff was not a malingerer," plaintiff's attorney Robert Majeske of Chicago's Foley & Majeske said. "He's disabled."

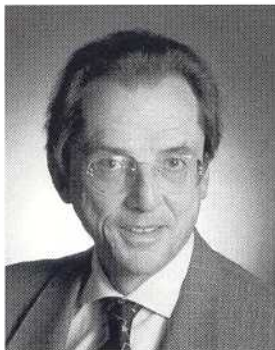


TUNNEL VISION: The plaintiff was injured in a January 1996 accident at this deep tunnel project located in Morton Grove, Ill.

Bowron was seeking \$10.5 million, but on Sept. 12, the Chicago jury rejected the claim. Post-trial motions have not yet been filed. "We haven't made a firm decision" on the next step, said Majeske.

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