

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

JENNIFER O'NEAL,

Appellant,

vs.

SHARNA HUDSON, individually;
GERALD LYLES, individually;

Respondents.

Case No. 70446

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Elizabeth A. Brown
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RESPONDENT'S APPENDIX, VOLUME 1

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TABLE OF CONTENTS

| | PAGE: |
|---|--------------|
| 1. Recorded Statement of Appellant | 1 |
| 2. Chiropractor Medical Record of Appellant | 5 |
| 3. Medical Doctor Medical Record of Appellant | 9 |
| 4. Photographs of Respondent's Car | 12 |
| 5. Photographs of Appellant's Car | 14 |
| 6. Jury Instructions | 18 |

Q: Connie
A: Jennifer O'Neal
B: Courtney - Adjuster

- 1 Q: Progressive Claim, this is Connie, how can I help you?
2
3 A: Hi, um, actually just had, um, one of your customers hit me in a car accident and I needed
4 to file a claim.
5
6 Q: All right. Well, I can definitely help you and get a claim set up. I'm sorry to hear that
7 there was an incident. Um, was there any injury?
8
9 A: No, everyone's fine as of right now, everyone's fine.
10
11 Q: OK. Well, I'm happy to hear everyone's OK. Um, can I start by getting your first and
12 last name, please?
13
14 A: My first and last name is Jennifer O'Neal.
15
16 Q: O-N-E-I-L?
17
18 A: E-A-L.
19
20 Q: OK. And you were driving when the accident happened?
21
22 A: Yes.
23
24 Q: What's the best phone number to reach you on?
25
26 A: 702-401-5246.
27
28 Q: Is that home, work or cell?
29
30 A: Cell.
31
32 Q: And the accident, that was today?
33
34 A: Yes.
35
36 Q: What time, please?
37
38 A: Uh, it was about 9:20 this morning.

125 A: 2008.
126
127 Q: And the color of the vehicle?
128
129 A: [Speaking to person in background: Sit back] It's white.
130
131 Q: White. And do you have the plate for your vehicle offhand?
132
133 A: Yes, I do, 474 . . .
134
135 Q: Uh-huh.
136
137 A: . . . 3HV.
138
139 Q: V as in Victor?
140
141 A: [Speaking to person in background: Sit back, she needs to hear me] Yes, H-V as in
142 Victor.
143
144 Q: And that's Nevada?
145
146 A: Yes.
147
148 Q: And how many people were in your vehicle?
149
150 A: Just myself.
151
152 Q: Just you, OK. And then there's rear damage to your vehicle. How is your car driving?
153 Is it driving OK still?
154
155 A: Um, actually my, uh, gate is still open. It's, I can feel it, something's going on in my
156 front tire. 'Cuz when they hit it they slid underneath my car. So the tailpipe and
157 everything back there, my trunk's pushed in and I can't close my, um, I can close my
158 trunk but it still says that it's open and my car's, all of my lights are on in my car. And I
159 just had got a brand new battery so I know it's gonna go out.
160
161 Q: OK, one moment.
162
163 A: 'Cuz if it, it wasn't the battery, you know, and the gate wasn't staying open then I
164 wouldn't have, uh, rushed . . .
165
166 Q: OK.
167

468
469 B: OK.
470
471 A: ... simple. [child screaming] [Speaking to person in background: Hold on sweetheart,
472 hold on, hold on, we're about to go.]
473
474 B: Where was the point of impact ...
475
476 A: ... [SS] ...
477
478 B: ... on ...
479
480 A: [Speaking to person in background: OK, get in the car.]
481
482 B: ... your vehicle?
483
484 A: It was the rear. He basically hit the back of my car. He kinda went up underneath my
485 car.
486
487 B: OK.
488
489 A: So it pushed in, it pushed in my trunk. So as, like I was saying, I don't want to turn my
490 car off 'cuz it's draining the battery right now, all the lights are on inside. Um, my
491 bumper is pushed in, there's, uh, what is it? The exhaust thing underneath it is all
492 scraped, it looks like there's a hole.
493
494 B: OK.
495
496 A: So there's, it's all the damage is going into the back. I don't know if he messed up
497 anything in the front. But I can feel my wheel on the right, on the right side, like,
498 something, it's making noise.
499
500 B: OK. Your passenger ...
501
502 A: So ...
503
504 B: ... rear tire?
505
506 A: Yeah. Yeah, 'cuz when you switch it into gear, and the transmission and stuff, like you
507 can feel something's not right. And when he hit my car I had a full icee in my car and it
508 flew into the, um, the clutch. You know, where it's part brake and all that, there's icee in
509 there. So I don't know if that's gonna affect it.
510

511 B: OK.
512
513 A: There's a [background noise] things and then I did . . .
514
515 B: And . . .
516
517 A: . . . have a speaker system in the back. And he hit my car so hard that all my speakers
518 flew forward and it pu-, it punctured holes in my speakers and in my amps.
519
520 B: OK. OK. And did you file a police report?
521
522 A: Yes, I did.
523
524 B: OK. Las Vegas PD; is that right?
525
526 A: Yes.
527
528 B: OK. And any witnesses that you know of?
529
530 A: No, there wasn't any. Just, uh, he had the people in his car.
531
532 B: OK. And any damage on your vehicle before this happened?
533
534 A: Um, no, there was little scratches up front, in the front side of my car but not in the back.
535
536 B: OK. [pause] OK, um, Jennifer, from my understanding you were wanting to obtain a
537 rental from Progressive; is that correct?
538
539 A: Yes, I have to have one 'cuz I have [interference] . . .
540
541 B: OK. So what I need to do, um, I need to try to call out to the driver and the owner of this
542 policy, so if you could hold for me I don't mind trying to call and see if I can get that
543 resolved.
544
545 A: Perfect . . .
546
547 B: But I do . . .
548
549 A: . . . perfect.
550
551 B: . . . uh, if I cannot reach them though we will not be able to get you in a rental today.
552 'Cuz we have to have our investigation completed and there's coverage issues on the
553 claim.

Dr. Peter Randall
Chiropractic Physician

Initial Narrative

Patient: Jennifer O'Neal
DOI: 09/24/12
DOE: 01/23/13

Complaint: Bilateral cervical pain
Bilateral low back pain
Right lower lateral rib/fascial pain radiating to the right crest
Right lower sternal pain
Difficulty standing and walking
Bilateral hip/trochanter pain
Right wrist pain
Right third (middle) toe pain

Diagnosis: Cervical sprain/strain (847.0)
Low back sprain/strain (847.2)
Involuntary spasm of muscles (728.85)
Enthesopathy of the hip region (726.5)
Rib pain on the right (786.50)
Difficulty walking/standing (719.7)
Sprain/strain of the right wrist (842.00)
Sprain/strain of the right foot (845.10)
Non allopathic lesions of the cervical spine (739.1)
Non allopathic lesions of the thoracic spine (739.2)
Non allopathic lesions of the lumbar spine (739.3)
Non allopathic lesions of the pelvis (739.5)

Mechanism of Injury: The patient is a 28 year old female who was involved in a MVA on 09/24/12. Ms. O'Neal states that she was the restrained driver of a 2008 Jeep Patriot that was rear ended by a Nissan Pathfinder (year unknown) as her vehicle was attempting to slow down. She also states to me that, at impact, her right foot was jarred from the brake pedal and it impacted the car's floor under the dash board. The patient reports to me that she did not see the impact coming and that her body and head were straight forward at impact. She reports to me that no airbag deployment occurred in her vehicle during the collision.

Chief Complaint: Ms. O'Neal complains of having bilateral cervical pain, bilateral low back pain, right lower lateral rib and fascial pain radiating to the right pelvic crest, right

lower sterna pain, difficulty standing and walking, bilateral hip/trochanteric pain, right wrist pain, and right third (middle) toe pain since the MVA on 09/24/12.

Past Medical History: Ms. O'Neal was involved in another MVA in 2009 and she states to me that she did not make a complete recovery from that accident. She also states to me that we discussed this latest MVA back in December of 2012 but that no treatment was rendered at that time. I do recall this conversation. She also states to me that she has had chronic chest congestion since the MVA on 09/24/12. I have advised her to have this examined medically.

Medications: The patient reports to me that she is not taking any medication at this time.

Social History: The patient is a 28 year old female. She is self employed as an event promoter. She presents to me in significant duress. She states to me that she does not drink alcoholic beverages or use caffeine. She also states to me that she smokes one pack of cigarettes per day.

Activities of Daily Living: This patient complains of having difficulty with her ADL's. I have instructed Ms. O'Neal to avoid any repetitive lifting, bending, twisting, stooping, or kneeling until further notice. I have also instructed the patient to not exceed a maximum singular lift of two to three pounds until further notice.

Review of Symptoms:

HEENT: Patient denies.

GI: Patient denies.

GU: Patient denies.

CardioRespiratory: As indicated.

Neuro: Patient denies.

Integument: Patient denies.

Endocrine: Patient denies.

Psych: Patient denies.

Musculoskeletal: As indicated.

Physical Examination: Physical inspection reveals pelvic unleveling with a lower left pelvis than right. The patient also demonstrates a lower left shoulder than right. Anterior list of the cervical spine is visualized. Left quadratus lumborum muscle hypertonicity is noted with +2 tenderness. Right quadratus lumborum muscle hypertonicity is noted with +3 tenderness. Left thoracolumbar paraspinal muscle hypertonicity is noted with +2 tenderness. Right thoracolumbar paraspinal muscle hypertonicity is noted with +2 tenderness. Left cervical paraspinal muscle hypertonicity is noted with +2 tenderness. Right cervical paraspinal muscle hypertonicity is noted with +2 tenderness. Right upper thoracic paraspinal muscle tonicity is noted with +2 tenderness. Left upper thoracic paraspinal muscle hypertonicity is noted with +1 tenderness.

Lumbar Range of Motion:

Dr. Peter R. Randall

CHIROPRACTIC PHYSICIAN

Patient: Jennifer O'Neal

DOI: 09/24/12

DOE: 02/08/13

Subjective: Ms. O'Neal states that her symptomatic status is minimally improved from her initial visit to my office on 01/23/13. However, she has anterior lower left rib pain and left lateral breast pain today that demonstrates some level of mass and/or edema.

Objective:

Inspection: Pelvic unleveling with a lower left pelvis than right is visualized. The patient also demonstrates a lower left shoulder than right. Anterior list of the cervical spine is also visualized.

Palpation: Left quadratus lumborum muscle hypertonicity is noted with +2 tenderness, right quadratus lumborum muscle hypertonicity is noted with +3 tenderness, left thoracolumbar paraspinal musculature is noted with +2 tenderness, right thoracolumbar paraspinal musculature is noted with +2 tenderness, left upper thoracic paraspinal musculature is noted with +1 tenderness, right upper thoracic paraspinal musculature is noted with +2 tenderness, the left cervical paraspinal musculature is noted with +2 tenderness, and the right cervical paraspinal musculature is noted with +2 tenderness.

Chiropractic Palpation: Cervical, thoracic, lumbar, and pelvic subluxations are noted with cervical, thoracic, lumbar, and pelvic hypomobility.

Orthopedic:

Neurologic:

Assessment:

- 1) Cervical sprain/strain (847.0)
- 2) Low back sprain/strain (847.2)
- 3) Involuntary spasm of muscles (728.85)
- 4) Enthesopathy of the hip region (726.5)
- 5) Rib pain on the right (786.50)
- 6) Difficulty walking/standing (719.7)
- 7) Sprain/strain of the right wrist (842.00)
- 8) Sprain/strain of the right foot (845.10)
- 9) Non allopathic lesions of the cervical spine (739.1)
- 10) Non allopathic lesions of the thoracic spine (739.2)
- 11) Non allopathic lesions of the lumbar spine (739.3)

12) Non allopathic lesions of the pelvis (739.5)

Plan: Chiropractic manipulative therapy was applied to this patient's cervical spine, thoracic spine, lumbar spine, and pelvis. Therapeutic exercises were performed to improve this patient's ROM, strength, and flexibility. Interferential therapy and ice packs were applied to this patient's cervical, thoracic, and low back paraspinal musculature to decrease pain, increase tissue compliance, and reduce edema. Ms. O'Neal was instructed to continue following her ADL modifications. She was also instructed to use ice packs at home and was instructed to perform cervical range of motion exercises and low back strengthening exercises, three times daily, that I taught her to perform in my office. RTC 3x/ week. I have referred her to a medical doctor to evaluate her left lower anterior rib pain and left lateral breast pain. She is seeing Dr. Ravi Ramanathan, M.D. later today.

Peter R. Randall D.C.



O'neal, Jennifer L.

28 Y old Female, DOB: 08/18/1984
3850 N Durango Dr Apt 2027, Las Vegas, NV 89129

Home: 702-272-5128

Guarantor: O'neal, Jennifer L.

Referring: Peter Randall

Appointment Facility: Family Doctors Of Green Valley

02/08/2013

Progress Notes: Joshua P Smith, PA-C

Current Medications:

Lorazepam 5-500mg 1 tab PRN

Medication List reviewed and reconciled with the patient

Past Medical History

No Medical History.

Surgical History

Abdominal 2002-2004

Family History

Father: alive 68 yrs over wt, hypertension

Mother: alive 49 yrs

1 sister(s) - healthy, 2 son(s) - healthy.

Social History

Tobacco Use:

Tobacco Use/Smoking

Are you a current smoker?

How many cigarettes a day do you smoke?

11-20

How soon after you wake up do you smoke your first cigarette? after 60 minutes

Are you interested in quitting? Thinking about quitting

Drugs/Alcohol

Alcohol Screen

Did you have a drink containing alcohol in the past year? No

Prints 0

Allergies

NKDA.

Hospitalization/Major

Diagnostic Procedure

Device Post Hospitalization

Review of Systems

Musculoskeletal

Pain in shoulder(s) affecting the right shoulder. Seizure affecting the lower right side of the body, affecting the lower left side of the body. Trauma to arm(s) denies. Trauma to hip(s) affecting the right hip. Trauma to knee(s) denies.

Reason for Appointment

1. NEW INJURY

History of Present Illness

Injury History:

28 year old female presents with c/o MVA

Referred by: Dr. Peter Randall, Chiropractor, 3 times/week, started therapy in early January

Date of Accident: 09/24/2012

Location in Vehicle: Driver

Wearing Seatbelt? Yes

Type of Vehicle Patient Is In: SUV 2008 Jeep

Synopsis of Injury: Patient's Vehicle was Rear Ended PT was

slowing down to turn right and was rear ended

Damage to Patients Vehicle: Moderate \$5,000

Time of Accident: Approximately 9:30 am

Patients Position During Accident: Looking Forward

Was Collision Anticipated? No

What was Patient's motion at Time of Accident? pt does not remember

Did Patient have Contact within Vehicle? She thinks she hit her right side on something

Was Patient in Shock At Time of Accident? Yes

Did Patient Lose Consciousness at Time of Accident? No

Did Airbags Deploy? No

What was Pain at Time of Accident? Mild and Pain Progressively Worsened as Time Went on.

Was Patient Evaluated Medically or PT/Chiro before visiting us? Yes

If Yes, explain when, where, and what tests done: Dr. Randall ordered x-rays of neck/back/chest/shoulder/hips.

Pain w/Activities of Daily Living (i.e. brushing teeth/showering/cooking): drive, lift heavy things, bend over, house work

Mood since accident? More Irritable Increased anxiety when in vehicle

Sleeping Patterns Since Accident: Difficult due to Pain

Any Affect on work/school? No, but have to work, will financially impact patient if patient does not go to work pt is self employer

Any Previous Injuries? Yes, then please explain. Cervical

Patient: O'neal, Jennifer L. DOB: 08/18/1984 Progress Notes: Joshua P Smith, PA-C 02/08/2013

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

9

Tingling to ankle(s) denies.

Weakness denies.

Neurologic:

Balance difficulty denies. Difficulty speaking denies. Dizziness denies. Loss of strength denies. Memory loss denies. Tingling/numbness admits, right leg.

lyphoid

c/c CHIEF COMPLAINT:

Headache: Intermittent, 5/10

Neck Pain: Continuous, 7/10

Shoulder Pain: Continuous, 7/10

Mid Back Pain: Continuous, 7/10

Low Back Pain: Continuous, 9/10

Skin Lesions: itchy small bumps over her entire body that started about 5-6 days after the accident. Covers her entire body and has been worsening

Other: sciatic nerve pain on both legs pain 3-7/10 intermittent, rt. foot pain 4-5/10 constant and increase at HS, rt. wrist pain 2/10 intermittent, lt. breast lump pain 5/10 intermittent first noticed shortly after the accident. She attributes this to the seat belt, intermittent hemorrhoids and upset stomach, rib pain on rt. side 4/10 intermittent, lt. side rib 6/10 intermittent, 2 periods in the past month lasting a few days each. She's never had irregular periods in the past and attributes this to the accident. left ear has decreased hearing, cracked a upper right molar. Pt says that she bit down when the car was hit and she heard a crack in her right jaw- pt will schedule an appt w/ the dentist. Pt denies having any of these a/s prior to the accident

Severe anxiety since the accident, worse while driving. Given Lorab at the ER for pain which helps. She does not take anything to anxiety and does not want any tx at this time anxiety.

Vital Signs

Wt 122.1 lbs, Temp 98.4 F, BP 115/74 mm Hg, HR 68 /min, RR 18 /min, Ht 66.5 in, BMI 19.41 Index, Oxygen sat % 97 % dm.

Examination

General Examination:

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

HEAD: normocephalic, atraumatic.

EYES: Sclera is white w/o redness or discharge. PERRLA bilaterally.

EARS: No redness, inflammation bilaterally. Non-tender to retraction of external ear. Pinna non-tender. Canals are clear w/o erythema, redness, inflammation. TMJs are intact, pearly gray w/o erythema or lesions. No fluid level or bulging bilaterally..

NOSE: Airway patent. Symmetric w/o deformity. No discharge. Turbinates are pink w/o erythema, lesions, polyps..

ORAL CAVITY: Oral mucosa moist. Uvula midline. Tonsils are present and symmetric w/o erythema or lesions. Severe dental carry of medial side of right upper most posterior molar.

SKIN: Numerous small white plaques on trunk and extremities.

HEART: RRR, S1/S2 heard w/o murmurs, clicks, gallops, rubs. .

LUNGS: Regular rate and unlabeled w/o cough. Clear to auscultation w/o wheezing, rales, rhonchi bilaterally A/P/L..

BREASTS: Firm moveable mass on left breast in the upper outer quad. Non-tender. No nipple discharge..

1. Other motor vehicle collision with motor vehicle, injuring driver of motor vehicle other than motorcycle

Referral To: Radiology

Reason: MRI of lumbar spine w/o contrast

2. Acute pain due to trauma

Referral To: Radiology

Reason: MRI of lumbar spine w/o contrast

3. Lumbago

Referral To: Radiology

Reason: MRI of lumbar spine w/o contrast

4. Unspecified backache

Referral To: Radiology

Reason: MRI of lumbar spine w/o contrast

5. Lump or mass in breast

Referral To: Radiology

Reason: Left breast US

6. Thoracic or lumbosacral neuritis or radiculitis, unspecified

Referral To: Radiology

Reason: MRI of lumbar spine w/o contrast

7. Others

Start PrednisONE Tablet, 20 MG, 1 tablet with food or milk, Orally, THREE TIMES PER DAY, 5 days, 15, Refills 0

Start Loraz Tablet, 5-500 MG, 1 tablet as needed, Orally, every 6 hrs prn for pain, 30 days, 60, Refills 0

1. Left breast US.

2. Prednisone burst. Rx for Loraz.

3. Continue PT/Chiro.

4. MRI of Lumbar spine w/o contrast

5. Discussed treating her anxiety. She'd like to wait at this time.

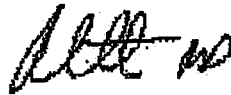
6. f/u in 3-4 weeks, sooner if she has new/worsening pain.

7. She'll also schedule an appt for a CPE and to establish care as a regular pt, unrelated to MVA

8. She'll call tomorrow to f/u w/ a dentist.

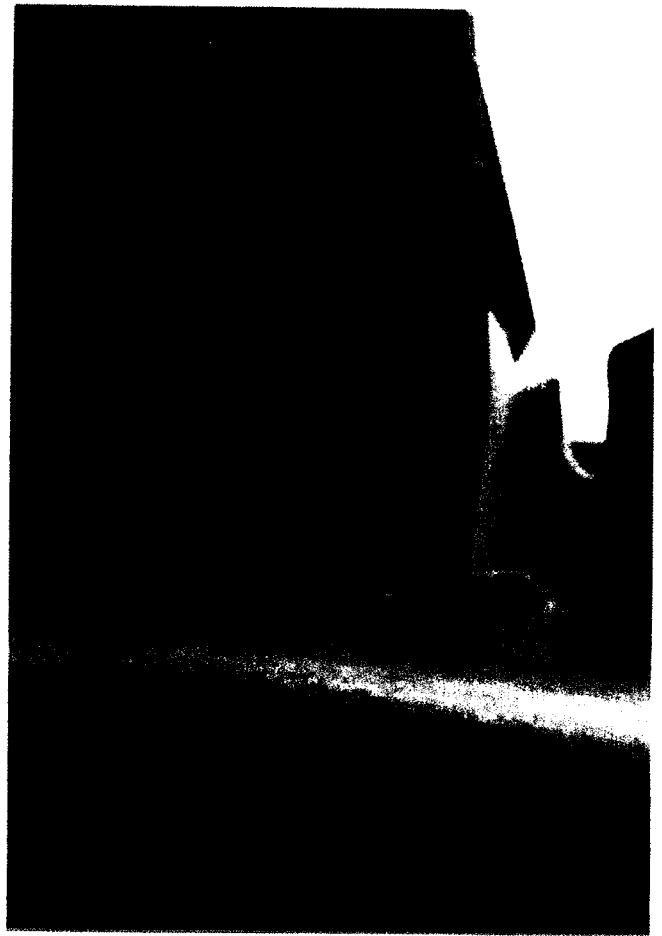
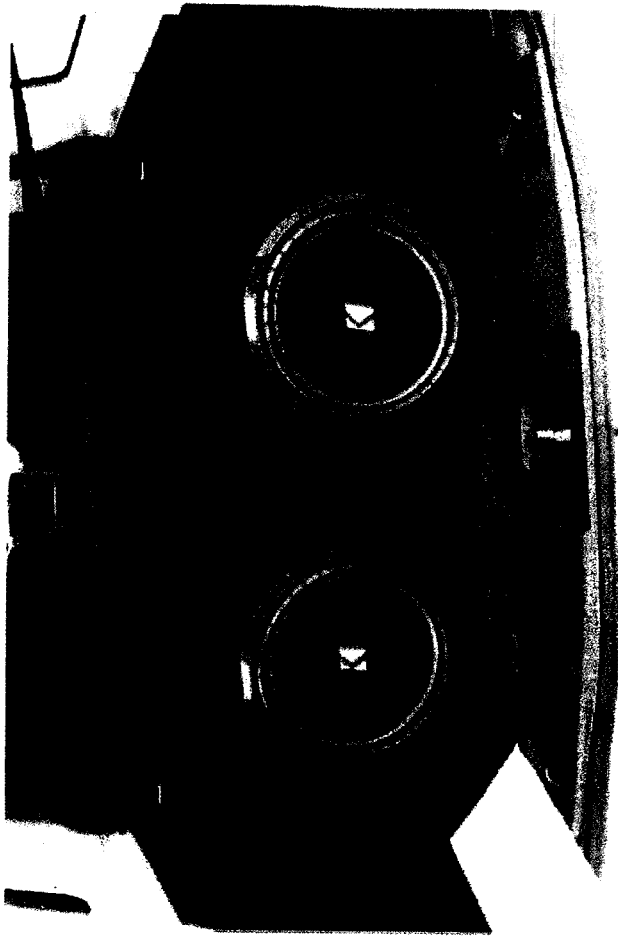
Follow Up

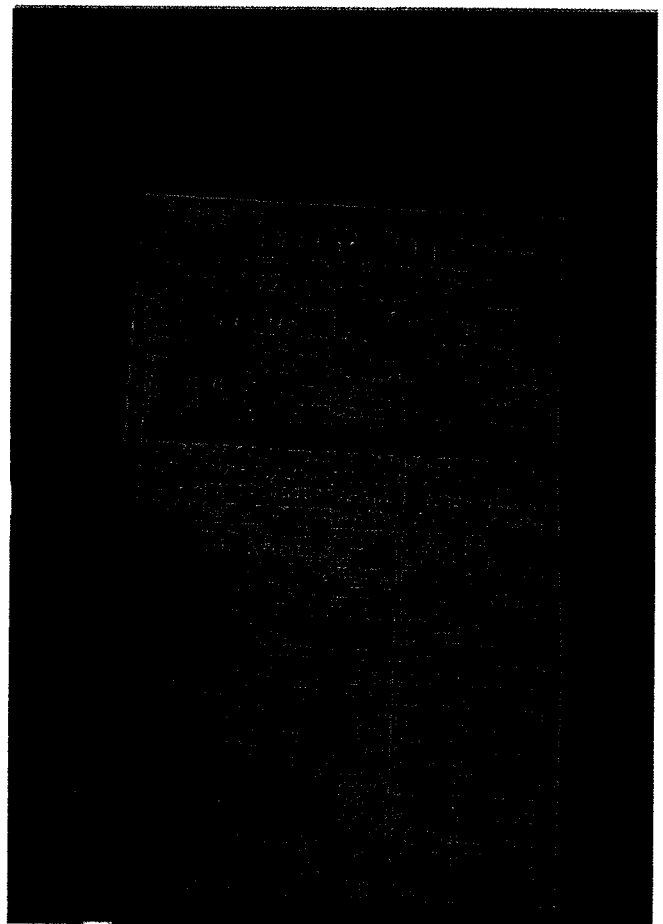
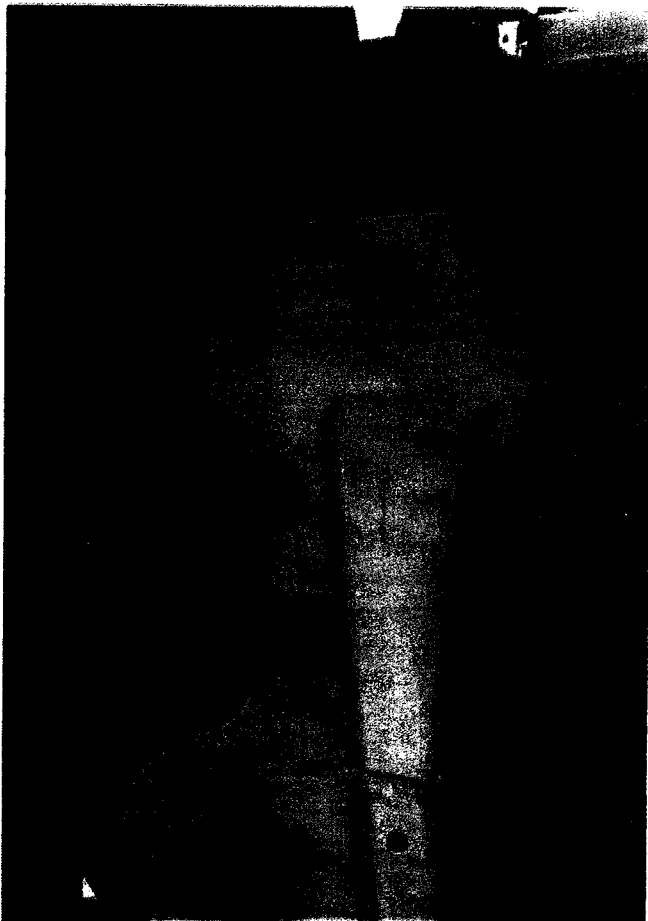
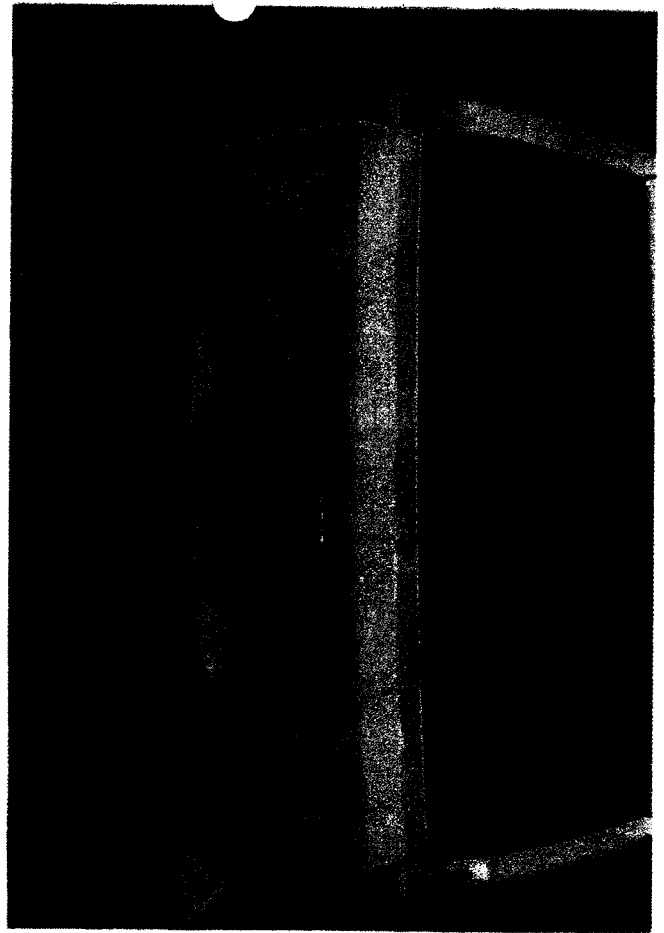
4 Weeks

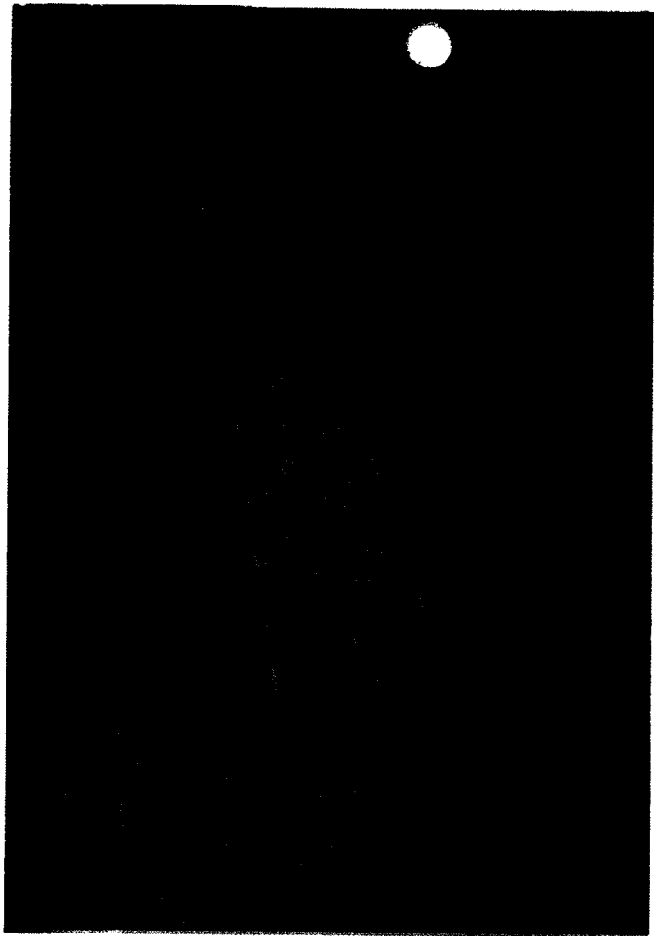


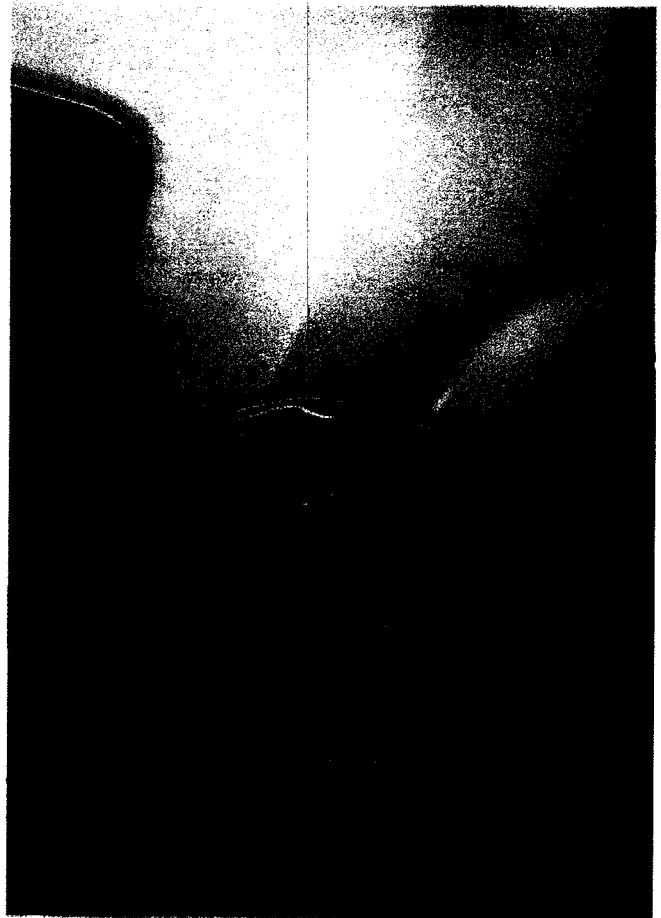
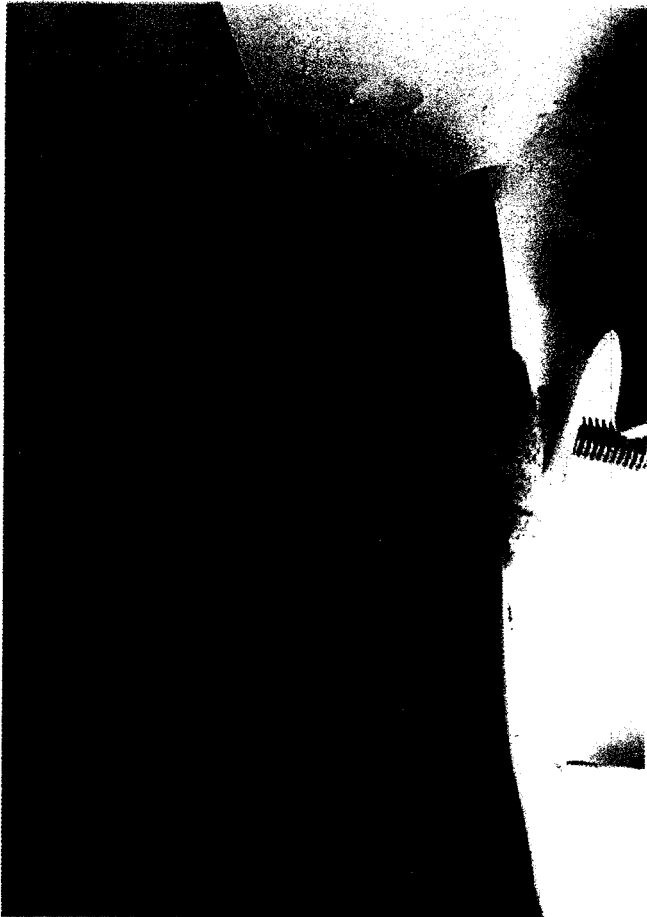
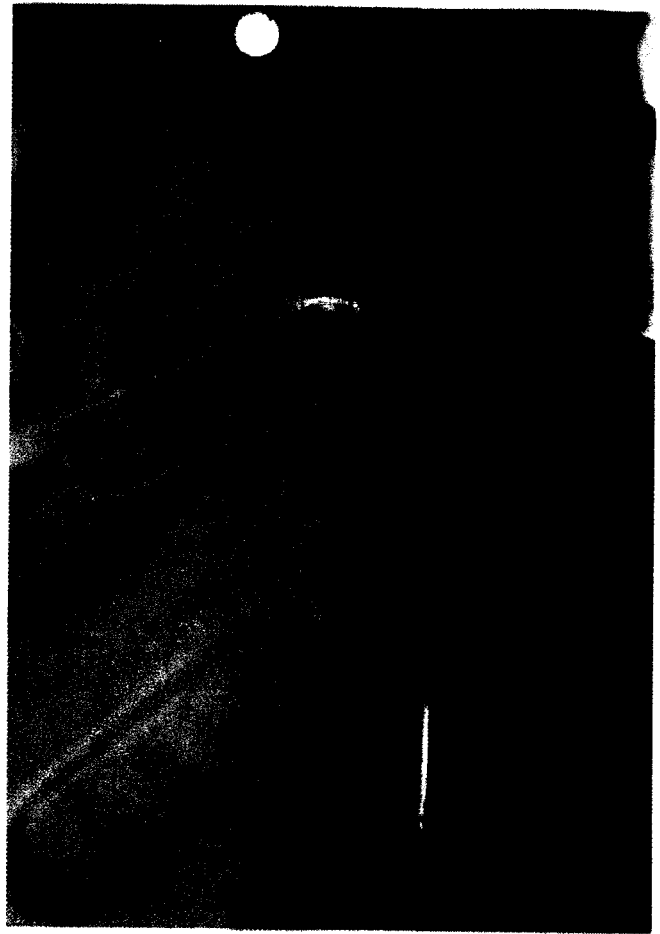
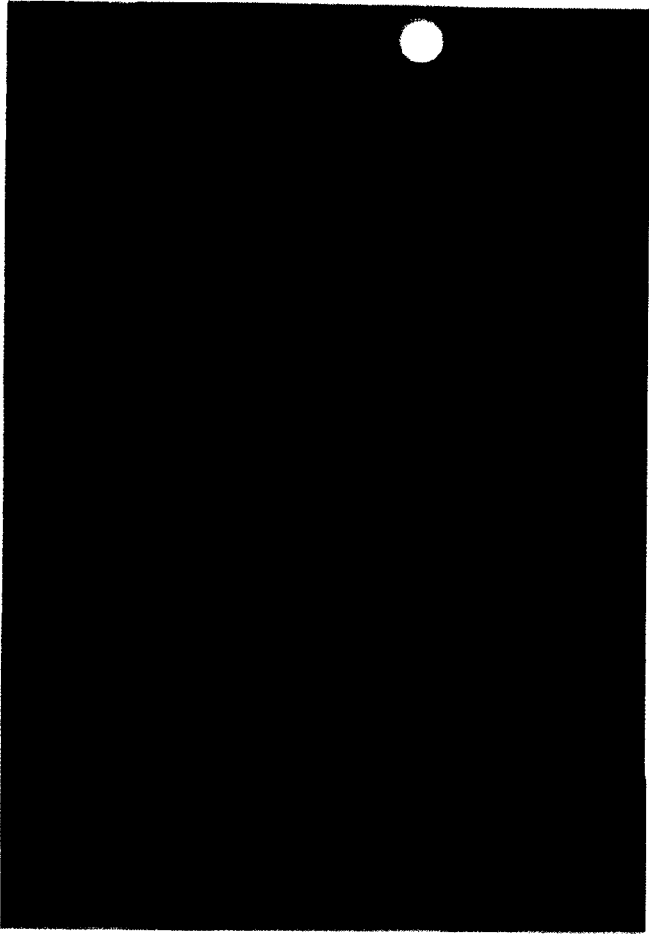












JURY INSTRUCTION NO. ____

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

JURY INSTRUCTION NO. ____

The plaintiff has the burden to prove that the plaintiff sustained damage, that the defendant was negligent, and that such negligence was a proximate cause of the damage sustained by the plaintiff.

The defendant has the burden of proving, as an affirmative defense, that some contributory negligence on the part of the plaintiff himself, was a proximate cause of any damage plaintiff may have sustained.

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same not to be true.

The term preponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.