

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: January 27, 2007

RE: **George and the Stroke AOE/COE Issue**

FROM THE LOBBY BAR AT THE HYATT:

I knew something was wrong as soon as I saw the ambulance parked in front of the Hyatt. When I finally made my way to the lobby bar I saw that Dr. Ratbar, George the Bartender and George's attorney, Ron Summers, were in hushed conversation. I learned that one of the bus boys, Rafael, had collapsed at work and was being rushed to the hospital. George told me that when Rafael had regained consciousness he told the bus boy that his attorney and Dr. Ratbar would accompany Rafael to the hospital to "protect his rights." Sure enough as the ambulance was about to leave Dr. Ratbar and Ron Summers, holding an application for adjudication in his hand, rushed to hop into the back of the emergency vehicle.

As I ordered my first martini of the evening George confided in me that Dr. Bratbar was positive that Rafael has sustained a stroke. George had told Dr. Bratbar and Ron that the dinning room Chef yelled at everyone including Rafael and they concluded that this "stress" at work caused the stroke. After contemplating and then devouring the second olive in my martini I told George that "stress" can never be the **direct** cause of a stroke and depending on the type of stroke could be the indirect cause. George was puzzled and told me that he thought a "stroke was a stroke" and threatened to withhold my second martini until I explained.

Although "emotional stress" can never be the DIRECT cause of a stroke, acutely elevated blood pressure precipitated by stress can result in a hemorrhagic stroke but not a lacuna stroke. If one has a hemorrhagic stroke this can be verified by a "bleed" or blood which can be seen on a CT scan of the brain. A lucuna stroke can be verified by an MRI scan which will show an infarct involving the thalamus.

Both hemorrhagic and lacuna strokes are ultimately caused by hypertension although a lucuna stroke can also be caused by long standing diabetes. Although long standing hypertension can be the cause of a lacuna stroke this type of stroke CANNOT be caused the a sudden elevation in blood pressure due to emotional upset.

In Rafael's case we would first look at the scans (MRI, Ct,) of the brain to see if there is a bleed and, if so, it is possible that Rafael's hemorrhagic stroke was caused by a sudden increase in blood pressure as a result of being yelled at by the Chef.

In looking at a case involving a stroke or cerebrovascular accident (CVA) we always want to go to the medical dictionary and define our terms. The term CVA is medical short hand for a stroke or cerebral hemorrhage. A hemorrhage is a bleed and a stroke is a condition due to lack of oxygen to the brain which may lead to paralysis. An infarct is an area of tissue death due to a local lack of oxygen.

In investigating injury AOE-COE in a stroke case we need to determine if the applicant has a history of long standing hypertension or diabetes and in our letter to our QME we need to ask our QME whether we are dealing with a lacuna or hemorrhagic stroke. Rafael's stroke was definitely in the course of his employment (COE) but in order to be compensable the stroke must also arise out of the employment (AOE). If the stroke was a hemorrhagic stroke and the "bleed" can be seen on the CT scan then the stroke may be compensable. However, if there is no bleed on the CT scan and the MRI shows an infarct on the thalamus then we are dealing with a lacuna stroke which cannot be caused by a sudden elevation in blood pressure caused by stress.--Make mine a double George.

Disclaimer: Although the story above is a product of my imagination the medical theory is not. Using undisputed medical evidence that a lacuna stroke could not be caused by the sudden elevation of blood pressure due to severe emotional stress we obtained a Finding of No Injury in the case of Ninoska Hernandez versus Bank of America. The decision was never appealed and remains a trial decision. Anyone wishing a copy should e mail me.--joe truce