

Defending RSD Cases with Experts

By Bruce Lee Schechter

Injury claims for reflex sympathetic dystrophy (RSD)/complex regional pain syndrome can be the most difficult to defend. The very nature of the injury and lack of objective findings to support the injury is what makes this particular litigation so difficult. When defending a claim of RSD, the most important responsibility for the attorney is to retain and hire physicians who have a working knowledge and practice in treating this syndrome, diagnosing the syndrome and understanding the proper prognosis for the syndrome. Typically, each case will necessitate a *number* of medical disciplines to be involved in the joint diagnosis and prognosis for either someone suffering from the syndrome known as RSD or in defending the claim that the plaintiff or litigant does not suffer from the syndrome known as RSD.

History and Evolution of RSD

In litigating a claim of RSD, it is imperative to understand the history of the syndrome and where it has now evolved.

The medical literature clearly establishes that in 1864, Dr. Silas Mitchell and colleagues described a chronic pain syndrome with severe burning pain that followed injury to peripheral nerves from gunshot wounds sustained in the Civil War. Dr. Mitchell called what we now know as “chronic regional pain syndrome” (CRPS) Type II, “causalgia or burning pain.” Years later, Dr. Rene Leriche, a French surgeon, connected the sympathetic nervous system to causalgia by noting that sympathectomy provided pain

relief in many of his patients. What then evolved was the term “reflex sympathetic dystrophy,” or CRPS Type I, being used for a syndrome similar to causalgia that lacks a specific nerve lesion.

Because many medical doctors were of the opinion that reflex sympathetic dystrophy (RSD) was a misnomer as it implies a reflex mechanism associated with a hyperactive sympathetic nervous system (SNS), which is not the case, the International Association for the Study of Pain (IASP) established a uniform terminology and diagnostic criteria. The IASP grouped the disorders under the term “complex regional pain syndromes.” As previously stated, Type I CRPS corresponds to RSD and occurs without an identifiable nerve lesion. Type II CRPS (previously causalgia) results from a specific nerve injury. The accepted diagnostic criteria for CRPS Types I and II include:

- Regional, spontaneous pain, allodynia, or hyperalgesia not limited to the territory of a single peripheral nerve and disproportionate to a known inciting event;
- Evidence of edema, changes in skin blood flow, or abnormal sudomotor activity in the region of the pain;
- Presence of a noxious event or cause of immobilization (absent in 5–10 percent of patients);
- No other condition that otherwise accounts for the degree of pain and dysfunction;

- Ability to differentiate CRPS from other neuropathic pain states by the presence of edema, vascular motor and sudomotor dysfunction.

Since the condition now known as CRPS was first diagnosed, the etiology or cause of this syndrome has substantially expanded where it is now believed that CRPS may be triggered by a variety of insults, such as trauma (soft tissue injury), surgery, inflammation, stroke, nerve injury, and immobilization. It is well documented that the syndrome occurs frequently in young adults and more frequently in women than in men. It is further well documented that no correlation exists between the severity of the injury and the resulting painful syndrome. It is also well documented that even psychological stressors and poor coping skills can influence the natural history and severity of CRPS.

The one thing that all medical experts in RSD/CRPS litigation can and will agree upon is that this disease or syndrome that is still poorly understood and at times extremely mystifying.

The Diagnosis Dilemma

What makes the diagnosis of CRPS so difficult from the medical standpoint is the lack of objective or diagnostic testing that could be performed to substantiate or validate a diagnosis of CRPS. Other than bone scans, which can rule in a diagnosis of CRPS, but do not rule out a diagnosis of CRPS, there are no other diagnostic tests that the medical community agrees is indicative of substantiating that someone suffers from CRPS.

Although x-rays can be helpful, and some medical practitioners may still use thermograms, the use of diagnostic tools is rarely agreed to be a useful medical tool in diagnosing the syndrome of RSD/CRPS. Because of the lack of diagnostic tools available to the medical practitioner, the diagnosis of CRPS remains clinical, although, as stated above, tests can aid in the confirmation.

It is almost a universal agreement upon the knowledgeable medical practitioners that in order for someone to be diagnosed with RSD/CRPS, they must suffer from allodynia. Allodynia in layman's terms means that the patient is hypersensitive to touch combined with burning pain. Due to the difficulty in diagnosing this syndrome and the voluminous amount of inaccurate and incorrect information regarding this syndrome being shared over the Internet, it is imperative that the attorney retain the services of competent medical doctors with knowledge of the syndrome, that are well respected in their discipline of medicine, when defending these claims.

Experts to Use

The following is not an exhaustive list of those medical doctors or disciplines that you may select to use in defending a claim of RSD/CRPS but rather a guideline.

- **First and Foremost—The Neurologist**

Typically, the medical discipline that is most capable of making a diagnosis of RSD being present or not being present is the neurologist. One would want to select a

neurologist who has a subspecialty interest in peripheral nerve-injury type cases. This particular discipline affords the attorney a very solid foundation to diagnose the patient with RSD or opining that the patient does not suffer from RSD. In addition to the physical examination, it is critical that the neurologist at the time of the exam look for objective signs consistent with the condition. The objective signs typically found in someone suffering from RSD/CRPS are as follows:

- Temperature change in the affected limb;
- Skin color changes in the affected limb;
- Sweating or edema asymmetry in the affected limb;
- Trophic changes or motor dysfunction;
- Hyperalgesia or allodynia;
- Weakness, tremor, dystonia, hair, nail or skin changes.

- **Other Disciplines to Consider**

Once the neurologist performs the examination and looks for the objective signs, the following disciplines of medical providers should be considered for the following reasons:

- A board certified **orthopedic surgeon** to rule out another cause for pain or discomfort to the affected extremity. For example, the characteristics of

frozen shoulder are very similar to the subjective complaints of someone suffering from RSD/CRPS - Type I. It is imperative for an orthopedist to perform an examination and possibly manipulation under anesthesia to rule out the condition of frozen shoulder rather than simply diagnosing the patient with RSD/CRPS - Type I. In addition, the orthopedist is able to look for objective signs consistent with someone suffering from RSD/CRPS - Type I similarly to a neurologist.

The patient/plaintiff may be suffering from chronic pain syndrome and not from the syndrome known as RSD. The orthopedist is the best discipline to determine whether or not there is a musculoskeletal injury consistent or inconsistent with a diagnosis of RSD or CRPS Type I. The orthopedist may also offer an opinion as to whether or not the three-phase bone scan, if performed, was consistent with a diagnosis of RSD or not. The same orthopedist, if a three-phase bone scan was not performed, could suggest that one needs to be performed.

The orthopedist also can offer opinions consistent with RSD/CRPS - Type I from the standpoint of radiographs (x-rays). There will normally be a finding, or a display, of patchy osteopenia as soon as two or three weeks after the onset of CRPS. As the syndrome progresses, a ground-glass appearance to the bony anatomy reflects generalized osteopenia which can be seen by a Board Certified knowledgeable orthopedist as it relates to the presence or non-presence of RSD/CRPS Type I;

- One may consider retaining the services of a board certified **neuroradiologist** who can opine with respect to the three-phase bone scan, a single bone scan, plain radiographs, MRIs or sometimes thermograms. A knowledgeable radiologist is able to assist you in two regards. First, by explaining that the three-phase bone scan, one phase bone scan or plain radiographs are not supportive or indicative of someone suffering from the RSD syndrome. Second, the neuroradiologist can demonstrate how MRIs or CAT scans are indicative of someone suffering from another condition—such as a disc herniation—that may be causing the symptomology that is being claimed by the plaintiff/patient and is incorrectly being diagnosed as RSD. An example of this would be burning pain that is sometimes caused by a disc injury but is most often associated with RSD. If the patient does have a disc herniation and is claiming a burning pain, you must first rule out the disc injury before concluding that it is a diagnosis consistent with RSD.
- Physical therapy is the most integral aspect of treatment of CRPS. The lack of physical therapy provided to or received by the plaintiff/patient is something that can be discussed by a board certified **physical therapist**.

If possible, you want the physical therapist to be certified or a specialist in the particular part of the anatomy which is being claimed to be affected or associated with the syndrome of RSD. For example, if it is the right upper extremity, primarily the hand, you want a hand physical

therapist to look at the plaintiff, examine the plaintiff, and evaluate the therapy that has been provided. A thorough review of the therapy records and home exercise programs administered by the plaintiff may shed some light on whether or not the plaintiff suffers from the syndrome of RSD;

- The last physician one needs to consider retaining in litigating an RSD/CRPS - Type I case is a **pain management specialist**. These are the doctors who can analyze the limitations, restrictions, severity of the condition, necessary medication, possible surgical intervention, etc.

These are the physicians who will spend the majority of the time with the plaintiff/patient if the condition is diagnosed as RSD with respect to the issues of severity and future medical care. Typically, it is imperative that the pain management specialist perform a complete psychological examination of the plaintiff to determine (1) whether there is a psychological overlay and (2) what is the best future course of treatment that person would benefit from if they suffer from the condition or a similar condition such as chronic pain syndrome.

Testing, Testing, 1-2-3!

Finally, as previously stated, the diagnosis of CRPS remains clinical, though tests can aid in confirmation. It is imperative that the defense attorney consider reviewing all testing or initiating testing if allowed to clarify the existence of RSD or rule out conditions that

mimic RSD. For instance, vascular studies can rule out deep vein thrombosis or vascular insufficiency, EMGs can rule out peripheral neuropathy, radiographs and MRIs can rule out bone, disc, or soft tissue pathology, and blood testing can rule out infection, cellulitis, or rheumatologic disease.

Conclusion

To best represent your client in defending this very unusual and mysterious syndrome, remember to hire doctors who have a specialty or are very knowledgeable in the area of RSD/CRPS - Type I and who are not advocates but rather well-respected practitioners in their respective disciplines with the knowledge of the particular condition. The best way to defend these claims is to adequately prepare both from a legal standpoint, and, just as importantly, from a medical investigative standpoint.

Bruce Lee Schechter has been practicing law for 25 years and specializes in catastrophic injuries. Bruce has had the opportunity to handle more than 40 cases where the plaintiff claimed he/she was suffering from RSD with resulting trials in 9 of those cases. Mr. Schechter has successfully defended his clients and obtained defense verdicts or verdicts well below the offers he has extended in each of those 9 trials.