



## A New Focus On Traumatic Brain Injuries

Trial lawyer heads national push for better tests for plaintiffs

**S**tamford personal injury lawyer Stewart M. Casper, a former president of the Connecticut Trial Lawyers Association, has just been elected chair of the Traumatic Brain Injury Group of the American Association for Justice.

The AAJ is the new name for the American Trial Lawyers Association. At the group's annual convention in Vancouver, Canada, Casper also received a public service award for his legislative and fundraising work on national issues involving Medicare and the Employee Retirement Income Security Act (ERISA) subrogation.

Casper, a Connecticut representative to the AAJ for the past five years, was also editor of the litigation section's publication, increasing it from an eight-page summary into a 50-page electronic magazine that includes peer-reviewed scientific articles.

As he begins his year heading the traumatic brain injury group, his objective is to help his peers utilize the most sophisticated medical tools to their clients' advantage. Specifically, he wants to move trial lawyers from brain injury evaluations based on verbal tests – neuropsychology – to those based on actual images of the brain, such as MRIs. He spoke recently with Senior Writer Thomas B. Scheffey.

**LAW TRIBUNE:** Tell me about your traumatic brain injury work.

**STEWART CASPER:** The AAJ's Traumatic Brain Injury Group is primarily an educational and information-sharing subgroup. It now has a two-day program that targets TBI issues for all AAJ members. We conduct webinars open only to members of the litigation group, and annually we conduct a highly scientific and specialized program presented in a classroom-like set-

ting. It covers topics including neuroscience, neuropsychology and advanced neuro-imaging techniques.

**LAW TRIBUNE:** What's the difficulty for a typical trial lawyer taking on a traumatic brain injury case?

**CASPER:** One problem is, only a small number of health care clinicians devote a substantial amount of time to treating TBI patients. As a consequence, the long-term effects of TBI are overlooked and not adequately treated.

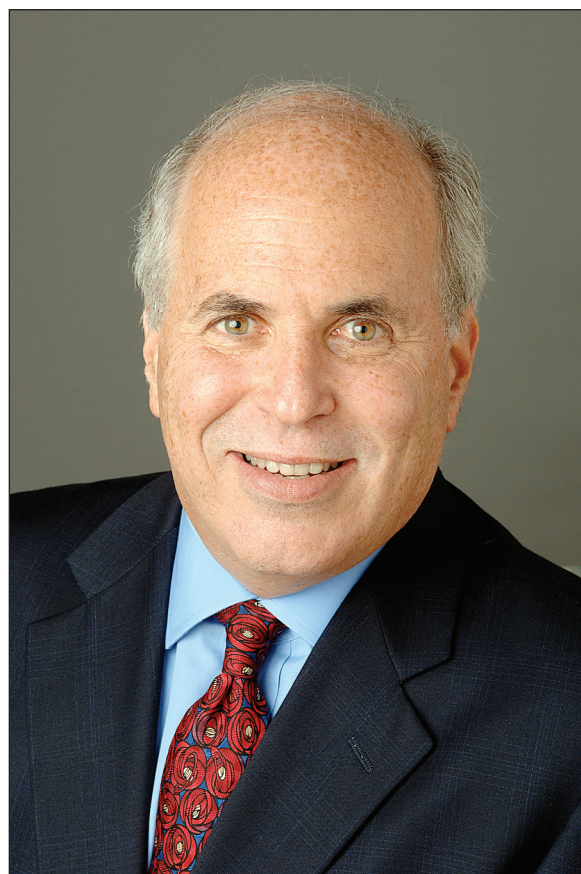
**LAW TRIBUNE:** So some sorts of brain injuries are not recognized as valid when it comes to a court awarding damages?

**CASPER:** There are two issues. One is, if the physicians are not addressing the problems that are global for these patients, and the lawyer doesn't [know] these issues, the client is going to suffer. There are plenty of patients who have head injuries, and probably TBIs, who are not referred out to health-care specialists.

[Many doctors still] categorize TBI as mild, moderate and severe. It is almost exclusively defined by periods of loss of consciousness. Those are classifications that were framed 20 years ago, and the science has advanced very far since then.

**LAW TRIBUNE:** What are the other problems?

**CASPER:** The first TBI seminar I went to



Law Tribune File Photo

**Stamford attorney Stewart Casper says too many physicians are using outdated methods of evaluating brain injuries, and that hurts trial lawyers who want the best result for their clients.**

was in 1979, probably a turning point in my career. There was a turning point in the science of TBI around that time, and they were talking about this new imaging technique that they called NMR — nuclear magnetic resonance. It has since become MRI, which we're all familiar with. Lawyers who rely on neuropsychology alone for dealing with mild [brain injuries] are behind the times. Neuropsychology by itself is

rather a crude measure of dysfunction. Neuropsychology doesn't measure deep into the brain.

**LAW TRIBUNE:** By neuropsychology, you mean a doctor evaluating brain injuries by asking the patient questions?

**CASPER:** You're sitting and talking, and the neuropsychology is measuring executive function, verbal, visual function – but it doesn't tell us where [in the brain] there is damage. The newer neuro-imaging technology will do that. Typically in a community hospital clinical setting, the imaging for acute treatment with a CT scan will often [show a normal result] in the context of a mild traumatic brain injury. All a CT scan tells us is whether there are broken bones and bleeding in the brain. The next level would be a MRI (magnetic resonance imaging).

**LAW TRIBUNE:** So you want trial lawyers to use the best machinery to establish the actual location and nature of the injury, not just measure symptoms.

**CASPER:** Lawyers at the beginning of the learning curve on the technology are often

relying on neuropsychological tests to try to identify a loss of cognitive dysfunction. They are written tests—memory tests, concentration tests. The problem is, they're not testing structures that are damaged. Secondly those tests are often manipulated for purposes of litigation. The defense examiner will often say, 'We think you [the plaintiff] are malingering' or not giving your best effort.' So how do you remove that subjectivity? The advances in neuro-imaging make that possible.

**LAW TRIBUNE:** It seems the brain is a real "gray area" of soft-tissue injury – unlike a broken bone, where the insurance companies can be assured they're compensating for an actual injury. It seems you're trying to move the debate from opinions about written tests to examination of specific images.

**CASPER:** There's more to it than that. It gets very expensive with depositions, challenges to the science. The tests alone can run \$10,000 or more. They're not readily available. You have the problem of under-education of clinical experts. It is often the case that lawyers have to hire experts to prove the case.

Payment for scientific proof often comes out of the lawyer's pocket.

**LAW TRIBUNE:** So much of a lawyer's training in this area will be in deciding which cases are worth expending the resources on.

**CASPER:** That's for sure. Particularly if you're spending your own money to do it.

**LAW TRIBUNE:** Is the insurance industry reluctant to pay for these expensive tests?

**CASPER:** Health insurance companies don't want to. It's not part of the normal protocol, because they say, 'We can't make a brain injury better.' [Though they can pay for appropriate therapy.] Health insurance companies are not going to be happy, because the standard of treatment will involve more treatment if we know more.

**LAW TRIBUNE:** The industries you're up against are saying, "Why do you want to look – you'll just find something."

**CASPER:** That's my mission. ■