

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2836

JAY DOROSHOW,

Appellant.

v.

HARTFORD LIFE AND ACCIDENT INSURANCE CO.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-08-cv-00259)
District Judge: Honorable Robert F. Kelly

Argued on February 3, 2009

Before: RENDELL, JORDAN and ROTH, Circuit Judges.

(Opinion filed on July 30, 2009)

Scott I. Fegley, Esquire (**Argued**)
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Counsel for Appellant

Brian P. Downey, Esquire (**Argued**)
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Counsel for Appellee

ROTH, Circuit Judge:

ORDER AMENDING SLIP OPINION

IT IS ORDERED that the published Opinion in the above case, filed on July 30, 2009, be amended as follows:

On page 5, delete the following paragraph:

Following this test, Doroshow visited Leo McCluskey, M. D., and ALS specialist, on July 27, 2005. Dr. McClusky wrote that "Doroshow demonstrates evidence of a lower motor neuron process affecting his right leg" and that "[h]e has no upper motor neuron signs." Accordingly, Dr. McClusky felt that "[t]hese are features that do not support the diagnosis of amyotrophic lateral sclerosis or a progressive motor neuron disorder." Doroshow was under Dr. McClusky's treatment for motor neuron disease between April 1, 2000, and June 30, 2006. Dr. McClusky was ultimately the doctor who diagnosed Doroshow with ALS on May 15, 2007.

and **replace it with:**

Following this test, Doroshow visited Leo McCluskey, M. D., and ALS specialist, on July 27, 2005. Dr. McCluskey wrote that "Doroshow demonstrates evidence of a lower motor neuron process affecting his right leg" and that "[h]e has no upper motor neuron signs." Accordingly, Dr. McCluskey felt that "[t]hese are features that do not

support the diagnosis of amyotrophic lateral sclerosis or a progressive motor neuron disorder." Doroshow was under Dr. McCluskey's treatment for motor neuron disease between April 1, 2000, and June 30, 2006. Dr. McCluskey was ultimately the doctor who diagnosed Doroshow with ALS on May 15, 2007.

By the Court,

/s/ Jane R. Roth

Circuit Judge

Dated: July 30, 2009

smw/cc: Scott I. Fegley, Esq.
Brian P. Downey, Esq.
Stacey I. Gregory, Esq.