Alberta Court Awards Fraction of Amount Claimed in Latest Chronic Pain Case

February 15, 2017

Petz v. Duguay, 2017 ABQB 0090

On February 10, 2017, Justice Sullivan delivered his decision in *Petz v. Duguay*, 2017 ABQB 0090. The Plaintiff's claim arose from injuries sustained in a motor vehicle accident on September 12, 2004 (the "Accident"). The 44 year old female Plaintiff was a passenger in a vehicle that was involved in a head on collision; after the Defendant made a left hand turn in front of the Plaintiff's vehicle. The Defendant admitted liability for the collision, and the issues for trial were the Plaintiff's injuries and resultant damages. Most of the particulars of the Accident were not in dispute and the Court found that both vehicles incurred significant damage of approximately $10,000 to $11,000.

This matter took four weeks to try and involved testimony from a number of experts — the Plaintiff called nine experts while the Defendant called five. The Plaintiff's evidence was that she suffered injuries to several areas of her body, including her left shoulder, left side of her neck, left lower back, nose, bladder and bowel, cervix, and a brain injury. The Plaintiff claimed that her symptoms were ongoing and severe, and all caused by this Accident, for which she continued to attend treatment which included facet joint injections to her neck and back. The Plaintiff put forward a number of experts, including numerous physiatrists, physiotherapists, and family doctors, as well as a psychiatrist and psychologist, who testified that the Plaintiff suffered from ongoing chronic pain syndrome and somatic symptom disorder as a result of the Accident. The Defendant's position was that any ongoing symptoms the Plaintiff was experiencing were not as a result of the Accident, but that her symptoms as a result of the Accident had long since resolved. As a result of her injuries the Plaintiff claimed damages in excess of $1 Million Dollars.

The Court preferred the evidence of the two orthopaedic surgeons put forward by the Defendant — Dr. Lowell van Zuidan and Dr. Richard Hu — rather than the expert evidence put forward by the Plaintiff's experts, and found that the Plaintiff's injuries had resolved by October of 2008. Sullivan J. found that the plaintiff suffered a moderate whiplash associated disorder and lumbar strain due to the Accident, from which she recovered approximately four years later. Apart from this, Sullivan J. found that there was insufficient evidence from which to conclude that the Plaintiff had developed an ongoing chronic pain syndrome or somatic symptom disorder, as a result of the

Accident. The Court further held that there was insufficient evidence to prove that the Plaintiff suffered the alleged injuries to her head, shoulder, nose, bladder/bowl, or cervix; noting that "these complaints arose well after the accident and are unverifiable but for [the plaintiff's] subjective complaints."

As such, the Court awarded the Plaintiff a total award of $76,028, which included general damages of $50,000, loss of past income of $21,710 and out of pocket expenses of $4,318. Importantly, the Court refused to award the Plaintiff damages for loss of housekeeping, costs of future care, or loss of future income or earning capacity.

This decision highlights the centrality of a plaintiff's credibility, particularly where the evidence hinges on that plaintiff's self-reporting. It also reminds us of the importance of obtaining Independent Medical Evaluations early on in the litigation process and the service of a Formal Offer in accordance with the *Rules of Court*.

By

Tory Hibbitt

Expertise

Insurance Claim Defence

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.