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Lawsuit Damages for Pain and Suffering Injuries from Car Accidents – Bill 198 Threshold

Ontario's current insurance system regulating car accidents includes a "test" or threshold by which only certain injuries can successfully claim damages for pain and suffering arising from a car accident.

That is, only "serious and permanent" injuries can be awarded damages for your pain and suffering. Lawyers in this area continue to focus on cases that deal with this Bill 198 threshold issue for guidance on what qualifies as serious and permanent pain and suffering damages – i.e. chronic pain, anxiety, depression, inability to sleep (insomnia), radiating pain into your legs / arms / neck / head, being scared of cars and being unable to drive, constant pain in your back, neck, shoulders, etc.

For background on this Bill 198 threshold and other cases dealing with serious and permanent injuries arising from car accidents, see our other blogs including: [May 14, 2008](#); [February 26, 2009](#); [April 17, 2009](#); [June 4, 2009](#) and our [July, 2009 newsletter](#).

The recent case of **Valdez v. Clarke** (2010 Ontario Superior Court of Justice) is a decision of Madam Justice Milanetti on the Bill 198 threshold.

This was a difficult case whereby the plaintiff was involved in 3 separate accidents and only one of the three was going to Trial, yet that Jury was asked to apportion responsibility for any injuries to each of the three accidents. The injuries were essentially soft tissue in nature; there were minor allegations of neurological issues arising from some nerve impingement along the spine.

After 14 days at Trial, the plaintiff did poorly with the Jury – he was awarded only \$25,000 in pain and suffering damage (prior to the application of the \$30,000 deductible under Bill 198) which means that the plaintiff was awarded "zero" dollars for pain and suffering. Under the other claims for past and future income loss, the plaintiff was awarded zero in damages.

Despite the result, both counsel asked the Court to render a decision on the Bill 198 threshold.

Important to the threshold decision was that the plaintiff and his wife had, as a result of this accident, lost a part-time cleaning business (i.e. 20 hours/week) that they had run for 1.5-2 years prior to this accident. Despite the plaintiff being able to work full-time in a new occupation (he had to find new work post-accident as a truck driver), there was also evidence that the plaintiff was a "changed" man after the accident, including that he no longer was a social person, he no longer cooked (which he enjoyed doing previously) and he did not pursue his prior hobby of photography.

Milanetti, J. found that the plaintiff did surpass the Bill 198 threshold because his injuries did "substantially interfere with most of the usual activities of daily living, considering the person's age".

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