

## More On BC Personal Injury Law And The Duty To Mitigate

June 17th, 2009

A plaintiff who fails to take reasonable steps to minimize their losses and injuries after a car accident risks having their claim reduced accordingly for this 'failure to mitigate'.

[I've written about this before](#) and reasons for judgement were released today by the BC Supreme Court demonstrating this principle in action.

In today's case ([Latuszek v. Bel-Air Taxi 1992 Ltd.](#)) the Plaintiff was involved in a serious intersection crash in the lower mainland. The Defendant died in the collision and the Plaintiff suffered serious injuries.

These injuries included Depression, PTSD and Chronic Pain. The Court valued the non-pecuniary damages (pain and suffering) for these injuries at \$100,000 but then reduced the award by \$40,000 due to the plaintiff's failure to mitigate.

Madam Justice Stromberg-Stein summarized and applied the law as follows:

*[84] Prior to setting non-pecuniary damages, I will address the duty to mitigate.*

*[85] There is a duty at law to take reasonable steps to minimize your loss, particularly where, as here, conservative treatments have been recommended. Because of the nature of the plaintiff's work, as a professional driver transporting fuel, he has limited his medication to Tylenol Extra Strength or Tylenol 8 Hour. Dr. Jaworski recommended exercises in the pool and gym and brisk walking. Mr. Latuszek says he swam once in a while, but he did not go to the gym or do brisk walking. Dr. Jaworski suggested that brisk walking may be contraindicated now that he knows that Mr. Latuszek has a torn medial meniscus. Mr. Latuszek does very little regular exercise of any kind, except once or twice a week. He did not try yoga, massage therapy, relaxation therapy or the medications as recommended by his psychiatrist. He has not taken holidays in the past two years to try the anti-depressant medication, yet he understands that such medication as well as exercise, may improve, if not cure, his symptoms. The plaintiff has not prioritized his recovery.*

*[86] In light of the authorities presented by the parties, I conclude that general damages, having regard to the injuries suffered by Mr. Latuszek and the continued problems in that regard, including depression, PTSD, and chronic pain, should be set at \$100,000. There will be a reduction of \$40,000 for failure to mitigate. Therefore, I award \$60,000 as general damages.*