

NEWS

Negotiating tactic can be misleading in settlement offer

Sometimes legal rights can seem like that game you play with a baby who thinks you've disappeared because you are out of view.

But then you pop your head up from under the table and say: "Peak-a-boo." The baby giggles in that game.

But ICBC is not giggling after a March 26, 2013, decision of British Columbia's Supreme Court, the result being that an injury claim ICBC thought had disappeared, popped back up from under the table.

The case might have implications extending far beyond that one injury claim.

A whole lot of innocent victims might end up popping their heads over the table, each with their own "peak-a-boo."

There is a sweet irony involved. It was an ICBC negotiating tactic, an unfair one in my view, that allowed new life to be breathed into a claim that would otherwise have passed in the night on the 2nd anniversary of the crash date.

The negotiating tactic has ICBC using their "building trust, driving confidence" brand, which they have built as a Crown



ACHIEVING JUSTICE
Paul Hergott

corporation, effectively using our tax dollars, to convince an injured victim that their settlement offer is a fair and reasonable one.

ICBC sends you a settlement cheque accompanied by a settlement proposal document that explains: "This payment is being tendered by ICBC as a fair and reasonable assessment of the above-noted claim."

In this particular case, the letter enclosing the cheque included the seemingly kind words: "At this time we would like you to have access to the funds that we feel represents a fair settlement."

Believing in the "building trust, driving confidence" brand, the injured victim has no idea that ICBC settlement offers are regularly small fractions of "fair and reasonable."

The cheque and settlement proposal document are delivered to the in-

jured victim before that magical two year deadline that applies to most car crash injury claims.

It's an unfortunate deadline, because it typically takes longer than two years before a permanent prognosis for car crash injuries can be provided.

"Fair and reasonable" compensation for an injury depends on what permanent symptoms the victim ends up with.

At the two-year mark, there is usually still optimism that there might be a full recovery.

Settling a claim before waiting out that optimism is a recipe for woefully inadequate compensation.

I'll explain where the "peak-a-boo" comes in.

The letter enclosing the cheque and settlement proposal document says "Without prejudice," the intent being to prevent it being used against ICBC to extend the limitation period beyond two years.

The document itself says it "...does not waive or extend any existing limitation period that applies to my claim."

ICBC had applied to the court to dismiss the claim of injured victim, in this case Mr. Coombs, who had missed the two

year deadline, having waited to engage a lawyer to commence his lawsuit until after the second anniversary of the crash.

Instead of dismissing the claim, the court held that ICBC's negotiation ploy had the effect of extending the limitation period. "Peak-a-boo," the claim will proceed.

If this negotiating tactic was used on you, or someone you know, please consult with a personal injury lawyer immediately.

You might have a second chance to find out what fair compensation really means, and be able to require ICBC to pay it, giving ICBC your own "peak-a-boo."

Limitation deadlines can be very complex. If you have a potential injury claim, take the time as soon as possible for a free consultation with a lawyer to find out what deadline applies to your claim. While most injury claim limitation deadlines are two years, there are exceptions.

The decision of Coombs v. LeBlond Estate can be found on the Supreme Court of British Columbia website.

I would be happy to provide you a link.

This column is intended to provide general information about injury claims. It is not a substi-

tute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is

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Deer carcass discovery is puzzling

JUDIE STEEVES
STAFF REPORTER

Conservation officers are looking for information about the carcass of a doe deer carrying twins which was found Saturday off Westside Road in the area of La Casa.

There is no open season on hunting deer in spring but it would not be considered illegal if it was taken by an aboriginal, who do not have to abide by the hunting regulations, explained CO Terry Myroniuk.

The animal's head and gut pile, with the two fetuses, was discovered off a logging road just north of La Casa, which is south of Fintry.

The remains were fresh when they were found, about 2:50 p.m. on Saturday, March 30, so he asked that anyone who was in the area around that time, who may have seen something that could be related, contact him through the toll-free, Report All Polluters and Poachers line at: 1-877-952-7277.

If it was a non-native kill, Myroniuk said

it would be considered poaching.

He said it's not certain whether it was shot at that

site, or just dumped there. jsteeves@kelownacapnews.com

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