

news

Legal aftermath of rear-ender accident case

A court decision released at the beginning of April recounts the aftermath of one of the most common of motor vehicle collisions: the rear-ender.

On Aug. 10, 2011, a young man was stopped at a stop light when some bonehead crashed into the back of his car.

The damage to the young man's car was assessed at about \$14,500. The damage to the young man, referred to as the "plaintiff" in the court decision, was the issue in the trial that spanned almost two weeks.

The plaintiff developed chronic pain and depression. He tried, but failed to return to his work in the hotel maintenance industry and was not working at the time of the trial.

He sought fair financial compensation on the basis that his condition

Achieving Justice

PAUL HERGOTT



was unlikely to improve.

The case was defended by the offending driver's insurance company.

One line of defence was to "blame the victim" for not doing enough to get better.

In legal terms, this is referred to as a "failure to mitigate" his losses.

The law was clearly outlined by the judge who noted the plaintiff's obligation "to take all reasonable measures to reduce his or her loss, including undergoing treatment to alleviate or cure injuries."

The judge also noted that to succeed in this defence, "the defendant must prove that the

plaintiff acted unreasonably and that reasonable conduct would have reduced or eliminated the loss."

The defence argued that while the plaintiff had undergone some psychological counselling, he had not undergone enough.

This "blame the victim" defence failed with the judge finding that the plaintiff could not be faulted in how he attempted to deal with his pain.

That wasn't the end of the matter, though.

The judge did find that further care, largely psychological, would do a lot of good. The judge accepted the optimistic prediction that with further rehabilitation, "the plaintiff will largely return to his pre-Accident level of functioning."

The further rehabilitation included attendance at a residential multi-disciplinary pain clinic and a course of psychological therapy.

The defence managed to avoid compensating the plaintiff for a future of chronic pain and disability with what I refer to as the "magic pill defence."

Even though it had been three and a half years since the crash, with the plaintiff continuing to suffer from chronic pain and depression, the "magic pill" of some further treatment would fix him.

Perhaps the optimistic prediction will come to pass and the approximately \$260,000 of compensated assessed by the judge will turn out to be fair. As with all predictions, though, perhaps not and it will turn out that this plaintiff was grossly

undercompensated.

This is the problem of coming to court before all possible care has been fully explored and attempted. The judge is left to, essentially, gaze within a crystal ball to predict the future.

One of the most critical functions of a personal injury lawyer, in my view, is to ensure that all possible treatment options have been identified and fully attempted so as to eliminate, as much as possible, the crystal ball gazing that is otherwise necessary to predict the future.

After all, care has been attempted, so the "proof is in the pudding" as to how successful it is.

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Revive broken household items

Do you have a household item in need of repair, don't want to toss it out, but you're not sure how to go about fixing it? Toaster that just won't toast? A lamp on the fritz? The old bicycle sitting neglected with a flat?

Then the Repair Café could be just the event you're looking for. Organized by the Regional Waste Reduction Office, the Repair Café takes place Saturday, April 18, 10 a.m. to 2 p.m., at the Okanagan College campus Center for Learning.

"Most often, when you get an item repaired, it's a drop off, pick up process, and you're not part of the repair work or the solution, you don't get to see how it's done," said waste reduction facilitator Rae Stewart.

"At the Repair Café, people are the process, and the free repair of items engages everyone participating."

"The sad truth is many household items have become cheaper to replace than repair, and the list of companies that refurbish items or fix broken appliances is short. Repair Cafes enlist handy volunteers to help fix broken household items at no cost and teach basic repair skills. They help shift us from a throw away to a fix-it society."

Stewart says most of our fixers are simply hobbyists who enjoy helping others and want to keep items out of the landfill. "They're all volunteering their time. They vary in age and background, just like those that come with broken items to be fixed."

To learn more about the Repair Café, visit regionaldistrict.com/recycle or call the Regional Waste Reduction Office at 250-469-6250.

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