Dr. Robert Brian Hines – Psychiatry

Amiri and Wawanesa Mutual Arbitration, Final Decision, FSCO 4710 Decision Date: **2015-11-30**

Wawanesa conducted a multidisciplinary assessment ("CAT assessment") to determine whether Mr. Amiri's impairments qualified as catastrophic in March and April 2012, just over two years after the accident, and concluded that they did not. Wawanesa's conclusion rests largely on the report of its psychiatric assessor, Dr. Brian Hines, who found only Class 2 mild impairments in each of the four functional categories identified in the *Guides*, based on his *DSM-IV*[4] diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood.

This contrasts with a January 27, 2012 Psychiatric Catastrophic Evaluation report by Dr. Abbas Azadian, Mr. Amiri's treating psychiatrist, who rated Mr. Amiri as markedly impaired in three categories – ADLs; concentration, persistence and pace; and adaptation. Dr. Azadian found moderate impairment in social function. His diagnosis was a Major Depressive Disorder with psychotic features, and a Pain Disorder Associated with both Psychological Factors and a General Medical Condition, both due to the accident.[5]

Simply put, Wawanesa does not accept that Mr. Amiri's psychological symptoms and subjective experience of pain equate to the levels of disability required to meet the tests under the *Schedule. ....*

And finally, I find Wawanesa's assessors did not adequately take into account Mr. Amiri's complaints of chronic pain, which, by definition, is pain that persists for six months or more which originates in injury but may no longer be caused by it. It is well established that persons suffering from chronic pain can be caught in a vicious self-reinforcing cycle of anxiety, depression and pain which gets worse the longer their normal life remains disrupted by their symptoms: ....

Diagnosis:

As noted, the first step in evaluating catastrophic impairment due to a mental or behavioural disorder is for the evaluator to make a diagnosis. The key reports are those of Dr.Hines and Dr. Azadian, who conducted the catastrophic impairment evaluations and provided diagnoses under the *DSM-IV.*[11] I find Dr. Hines, who only met with Mr. Amiri once, underrated his mental condition, partly because he did not accept Mr. Amiri's pain complaints as genuine, and partly because he did not have updated medical information from Dr. Azadian.

As noted, Dr. Hines found only Class 2 mild impairments in each of the four functional categories, based on his diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, of a mild degree associated with his reported pain, in March 2012. ....
This contrasts with Dr. Hines' March 2012 report, where Dr. Hines noted similar symptoms and limitations reported by Mr. Amiri but questioned the veracity of Mr. Amiri's subjective reports and his presentation during the assessment. He emphasized the previous psychological testing done by Ms. Goodfield and Mr. West, which revealed "significant validity issues with respect to

over reporting of his symptoms."[15] I find Dr. Hines discounted what Mr. Amiri told him on that basis, and underrated the severity of his psychological condition in diagnosing only a mild Adjustment Disorder with Mixed Anxiety and Depression.

A major weakness of Dr. Hines' diagnosis and opinion is that he was missing a key piece of information – Dr. Azadian's January 27, 2012 report. Dr. Hines' report indicates he only reviewed and referred to Dr. Azadian's first January 25, 2010 report, prepared two weeks after the accident, and two years before Dr. Hines' assessed Mr. Amiri. Dr. Azadian's more recent 2012 report contained a diagnosis of Major Depressive Disorder that included psychotic features, taking into account Mr. Amiri's irrational fears. I find this lack of information further caused Dr. Hines to underrate Mr. Amiri's depression and anxiety.

Having only Dr. Azadian's 2010 report, Dr. Hines assumed that Dr. Azadian was "content with [Mr. Amiri's] response to medication" because there were no reported changes in the year and a half since that report. However, in his January 2012 report, Dr. Azadian specifically noted that he had to make changes to Mr. Amiri's medications, and that even though Mr. Amiri's response to medication was poor, Mr. Amiri would need medications for a long time, and at high doses in combination. A note of Dr. Azadian's, dated August 20, 2010, also indicates Mr. Amiri struggled with many emotional and physical symptoms as well as the side-effects of medication. Mr. Amiri confirmed this in his testimony.

I find Dr. Hines' diagnosis lacked supporting detail and did not adhere as closely to the diagnostic model and criteria recommended by the *DSM-IV* compared to that of Dr. Azadian. The *DSM-IV* advocates a multiaxial system intended to promote a "biopsychosocial" assessment model that captures the complexity of mental disorders by including information about contributing factors such as general medical conditions, psychosocial and environmental problems, and level of functioning that may underlie a presenting problem – in short, a "wholistic" approach to mental disorders. I find Dr. Hines' reluctance to consider the broader picture caused him to underrate the consequences of the accident to Mr. Amiri.

Unlike Dr. Hines, Dr. Azadian in his report included a description of the factors that informed his diagnosis under each Axis. For example, under Axis III, Dr. Azadian identified the general medical condition affecting Mr. Amiri's diagnosis (Major Depressive Disorder with psychotic features and a Pain Disorder etc.) as pain in the neck, back shoulder, leg, spine and hand, and frequent headaches. Dr. Hines, in contrast, did not include any factors under Axis III, instead deferring to the physical medicine component of the CAT IE. This would have been the orthopaedic report of Dr. O. Safir, to which Dr. Hines did not refer anywhere in his own report. The consequence is that an important factor affecting Mr. Amiri's psychological condition – the impact of pain on his depression and anxiety – is not accounted for by Dr. Hines in considering the severity of his condition.

As a further example of the relative weakness of Dr. Hines' diagnosis compared to that of Dr. Azadian is that under AXIS IV, intended to report psychosocial and environmental problems that may affect the diagnosis, treatment and prognosis of psychiatric disorders, Dr. Hines noted

only "reported physical pain," whereas Dr. Azadian was more accurate and in-depth, identifying "inadequate social support, limited understanding of the impact of the need to adjust his coping system, and unable to go back to work" as factors that would affect the treatment and prognosis. I find these factors also affect the severity and intractability of Mr. Amiri's medical condition.

Dr. Azadian's opinion, that Mr. Amiri's depression was more severe than Dr. Hines thought, reflects that of Wawanesa's own psychological assessor, Cindi Goodfield, who concluded a year earlier that Mr. Amiri's mood was *significantly* compromised, to the extent that he met the test of substantial disability for both entitlement to housekeeping and income replacement benefits.[16]

Neither Dr. Hines nor Dr. Azadian themselves conducted any objective psychometric testing. Instead, Dr. Hines relied on the results of tests administered by Cindi Goodfield, psychologist, and Curt West, neuropsychologist, in January and March of 2011. I find Dr. Hines' acceptance of the test results at face value, while ignoring the explanations offered by Ms. Goodfield and Dr. West, again caused him to underrate Mr. Amiri's condition. .....

In August, 2012, Wawanesa had Mr. Amiri undergo medical assessments by an orthopaedic surgeon, a neurologist, a psychologist, and a vocational assessor at Cira Medical Services to determine his post-104 week IRB entitlement. These specialists concluded he did not meet the test, each from the narrow perspective of his own specialty.

None of these specialists, except for the vocational assessor, discussed below, addressed Mr. Amiri's pain complaints or the interrelationship between his psychological condition and his perception of pain, despite the fact that it was obvious from Mr. Amiri's reports and the reports of other medical health practitioners such as Drs. Maistrelli and Rod[38], that Mr. Amiri had developed a chronic pain condition. This failure to address a key issue significantly weakens their opinions, as does the underlying assumption in Dr. O. Safir's report, two years after the accident, that "the prognosis with respect to the initially sustained [soft tissue] injuries is good from an orthopaedic perspective." This general statement of belief about what should happen does not accord with what actually happened in this case — Mr. Amiri deteriorated after the accident despite therapy and developed a debilitating chronic pain condition. ....

R.J. and Dominion of Canada Arbitration, 2013-09-17

Ms. J. has particularly taken exception to Dr. Hines' role in the assessment process, claiming that his psychiatric assessment was flawed and that he overlooked key elements of potential evidence. Dr. Hines is also said to have made assumptions about Ms. J.'s recovery that stood in stark contrast to the opinions of her treating health professionals.

In other words, Dr. Hines essentially missed the boat on a woman who had severely disabling depressive symptoms to the degree that she became a suicide risk. She could not on any reasonable examination of

her treatment records be said to be in remission, either with regard to her substance abuse or her depression.

I accept Ms. J.'s submissions that Dr. Ahmed, her treating psychiatrist, was better placed to evaluate Ms. J.'s progress or lack of progress over a lengthy period of time, and I would accept that his view of Ms. J.'s psychological state will carry more weight than any brief snapshot by a non-treating assessor, even without the alleged misapprehension by Dr. Hines of the underlying conditions.

Rebuttal reports became important with the paring back of the DACs and other consumer protection inventions that had been intended to provide some degree of objectivity to the assessment and determination process.

With the demise of DACs, the final determination as to entitlement was made by the Insurer, presumably on the advice and with the assistance of its own assessors. Most of these assessors were drawn from an informal roster of professionals who gave their professional opinions to litigants. Not a few of these were characterized as "hired guns" by those disagreeing with an assessor's opinion.

Thus, when an insurer's expert conducted an insurer's examination on a claimant, it made sense that the claimant could commission his or her own report to address the shortcomings, if any, of the insurer's experts' analysis...

...In the context of this interim benefit hearing, barring unforeseen new evidence to support Dr. Hines' opinion of remission, I believe that an arbitrator hearing all the evidence would be inclined to ascribe any evidence of remission to misinformation, wishful reporting or a minor short-term variation of a chronic condition. Indeed, Dr. Ahmed, Ms. J.'s treating psychiatrist, is unequivocal: Ms. J. is not suited to any work.

While many issues which were the subject of I.E's and rebuttal reports verged on the trivial, others were not. In Ms. J.'s case, she applied for and was denied recognition of catastrophic impairment arising from the accident. Catastrophic impairment would allow her to access further attendant care, housekeeping and medical expenses so that her long-term care needs could be properly addressed.

Ms. J.'s accident happened in 2007. In the absence of a catastrophic designation, access to attendant care and housekeeping benefits would have ended in 2009. Likewise her access to medical benefits would be cut off in 2017. Consequently, access to the catastrophic designation is critical to the availability of what she sees as critical care.

Given Dr. Hines' apparent misinformation about remission of symptoms, GAF score and psychosocial issues, the importance of a credible rebuttal is critical to Ms. J..

Having a rebuttal report available can assist an insurer in making a fair determination and, to an arbitrator hearing this matter, should streamline the process by drawing together and placing in a medical context the alleged shortcomings of the insurer's medical legal reports.

In short, a rebuttal report in Ms. J.'s case would be not only reasonable but would facilitate the claims process. Consequently, if there is a basis to fund the report, it should be funded.

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Subramaniam and Wawanesa Arbitration, 2012-07-13

Mr. Subramaniam claims payment for psychotherapy treatment and related services, as set out in a treatment plan by psychologist, Dr. Andrew Shaul, dated July 22, 2010.

Wawanesa refused to fund the treatment after obtaining the opinion from Dr. Brian Hines, a psychiatrist. Although I find Dr. Hines' approach to be unduly narrow, I find that Mr. Subramaniam is not entitled to payment because the proposed treatment is not reasonable and necessary...

...Wawanesa referred the treatment plan for the opinion of Dr. Brian Hines. Dr. Hines concluded that the proposed treatment was not reasonable and necessary. He noted "I do not feel that any of Mr. Subramaniam's subjectively reported emotional symptoms are of the degree or to the extent to currently justify any particular psychiatric illness or diagnosis." Dr. Hines appeared to base his conclusion entirely on this lack of diagnosis.

Sections 14 and 15 do not restrict an insurer's obligation to paying for treatment of diagnosed psychiatric illness. The focus is improving functional restrictions caused by the accident. Because his focus was diagnosis, Dr. Hines did not analyse the cause of Mr. Subramaniam's reported symptoms or their effect on his ability to function. Thus, his opinion does not help the analysis, even if he is right on the issue of diagnosis...

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Sun and Wawanesa - Variation Appeal, 2010-12-16

It was on this basis that the Arbitrator found that Ms. Sun suffered from a psychological impairment and chronic pain syndrome. As noted above, the Arbitrator found that Ms. Sun's accident-related injuries, which included her chronic pain, headaches, sleep deprivation, depression, memory and concentration problems, prevented her from returning to work. This was a point she repeated in the November 2007 decision determining the amount of the special award:

> I am convinced from the evidence at the hearing that if Wawanesa had adjusted the file in a good faith manner, providing Ms. Sun with the early proper support that she required, rather than looking to thwart her in every way it could, that it is more likely than not that two years after the accident Ms. Sun would not be in such a deteriorated situation that she cannot return to work.

....In any event, while Ms. Greco-Sanchez's report may have identified potentially suitable jobs, it does not address Ms. Sun's problems from a psychological perspective, leading me to a discussion of the remaining report on which Wawanesa relies, that of Dr. Hines.

Dr. Brian Hines, psychiatrist, assessed Ms. Sun on February 28, 2008. Ms. Sun told him that she recently had a boyfriend and delivered a baby about four months earlier and that she lived in a friend's household where she was able to do light work, wash her own dishes and occasionally do laundry and cooking, but she was not able to sweep, mop, lift anything heavy or clear snow. Dr. Hines noted no particular distress when she used a taxi to get to the appointment, walked into the examining room, or was asked to complete the assessment after she had asked to stop early and finish another time. He writes:

> Ms. Sun stated that her mood was depressed and frustrated, but had improved slightly. Objectively, she appeared euthymic and displayed a full and fluid range of affect. She stated that she sleeps three to four hours per night and that her sleep is interrupted. There was no objective evidence of any sleep deprivation. Her appetite is low and her weight has increased. She stated that her concentration is poor and not improving. There was no objective evidence of any difficulty with her concentration. She was alert, focused and attentive. There was no evidence of any preoccupations or distractibility. She was able to retain all of my questions and none required repeating. She stated that her memory is poor, but is slowly improving. There was no objective evidence of any difficulty with her memory. She was able to provide an adequately detailed history and all of her responses were spontaneous. There was no evidence of any difficulty with word finding or recall. She stated that her energy is poor, but it appeared within normal limits. There was no evidence of any lethargy or fatiguing as the interview progressed. She continues to be social, but stated that she gets pleasure from nothing because her life is boring.

Dr. Hines concluded that there was no evidence of any psychiatric illness and that she did not meet the post-104 week any occupation test. However, while Dr. Hines did repeat the conclusions of the reports of Dr. Perlmutter, Dr. Goldsmith and Dr. Robinson noted above, there was no attempt to correlate them with his findings or the conclusions of the Arbitrator. As with the other reports, this report seems to completely ignore the Arbitrator's finding that Ms. Sun was psychologically disabled up to July 2007. Furthermore, the report obtained by Ms. Sun from Dr. J. Pilowsky, psychologist, drew an entirely different picture. ...

...In this case, Dr. Hines's report is completely inconsistent both with the medical assessments that found Ms. Sun disabled for psychological reasons before the hearing and with Dr. Pilowsky's report. For that reason, if it were necessary to do so, I would prefer Dr. Pilowsky's report over that of Dr. Hines.

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Poblete and Wawanesa Arbitration, 2009-06-18

Compared to this evidence, the remaining medical evidence tendered by Wawanesa is not persuasive. Wawanesa based its second termination of IRB's on the medical report of Dr. R.B. Hines, a psychiatrist. However, I found his June 2007 psychiatric assessment was particularly unhelpful. Despite a long trail of medical evidence indicating that Mr. Poblete suffered varying degrees of anxiety, depression, fluctuating mood disturbances, difficulty controlling anger and emotions and chronic pain after the accident, Dr. Hines felt that Mr. Poblete's emotional difficulty adjusting to his chronic pain and decreased functional abilities were not "of the degree or to the extent to currently justify any particular psychiatric diagnosis. From a psychiatric perspective, I do not feel that Mr. Poblete currently suffers an impairment as a result of the subject accident." [See note 17 below] He testified that he came to this conclusion because he did not observe any obvious signs of distress in Mr. Poblete, even though Mr. Poblete became tearful when discussing the effects of the accident.

I find this perspective to be overly narrow in the circumstances of this case, given the complex, multifactorial nature of chronic pain. The lack of a specific psychiatric diagnosis is not determinative and does not answer the question of whether Mr. Poblete's emotional or psychological difficulties and his perception of his pain, diagnosis aside, are sufficiently disabling that he would be substantially unable to engage in the essential tasks of his employment. Dr. Hines' report is at odds with those of other health practitioners, including the contemporaneous IE report of psychologist Dr. J. Shapiro, who subjected Mr. Poblete to a battery of tests and concluded he met the DSM criteria for Undifferentiated Somatoform Disorder and Dependent Personality Features, traits which would predispose him to emotional difficulties in dealing with chronic pain, and for which she found treatment was reasonable and necessary. Dr. Tunks also noted that Mr. Poblete was prone to somatization, but pointed out that this was not a characteristic one could simply be "talked out of" through psychological counselling alone. I place no weight on Dr.Hines' opinion.

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Uribe and Wawanesa Mutual Arbitration, 2008-09-25

Mr. Uribe's income replacement benefits were terminated on the basis of a multidisciplinary assessment which included: a Functional Capacity Evaluation by Dean Lurie, a kinesiologist, an orthopaedic surgeon's assessment by Dr. Stephen Gallay, and a psychiatric assessment by Dr. BrianHines. These assessments were conducted approximately four months after the accident.

In his assessment, Mr. Lurie rated Mr. Uribe's work duties "as **heavy** level of work capacity." He stated that "Mr. Uribe was pleasant and cooperative during the Functional Capacity Evaluation." However, Mr. Lurie was unable to provide any meaningful conclusions because Mr. Uribe was unable to complete 10 out of the 13 tasks due to subjective reports of pain. Specifically, Mr. Lurie noted that "Mr. Uribe appeared focused on his pain symptoms during today's assessment, and limited his performance as a result."....

...Dr. Hines concluded that Mr. Uribe's "subjectively reported impairments" were not of sufficient severity to cause a disability. From a psychiatric perspective, he was of the view that Mr. Uribe did not suffer a substantial inability to perform his pre-accident employment....

...In his conclusions, Dr. Morris stated that: "Diagnositcally, Mr. Uribe …would appear to meet accepted DSM-TR criteria for Pain Disorder at this time."; "The main clinical impression is that Mr. Uribe is suffering from unresolved emotional impairments and prudence suggests that these psychological sequelae of the accident should receive professional attention."

Dr. Morris further states:

> Findings of this evaluation seem different from the conclusions of Dr. Hines psychiatric evaluation of Mr. Uribe's eligibility for income replacement and housekeeping benefits, where no diagnosis was established and Mr. Uribe's depressive symptoms were rendered to be adequately treated with medications. Despite Dr. Hines opinion that Mr. Uribe's complaints at the time of his evaluation might not have been proportionate for a clinical diagnosis, it is opined that his current MVA complaints do require psychological attention.

.... **Dr. Hines' Addendum Report**

A little over a week before the motion hearing, on August 27, 2008, Dr. Hines prepared a brief addendum to his April report wherein he stated that he conducted a paper review of Dr. Morris' report of June 22, 2007, as well as Dr. Pilowsky's report of July 23, 2007. Without providing any analysis or reasons Dr. Hines concluded: "After reviewing the additonal documentation, the opinions expressed in my Psychiatric Assessment Report dated April 26, 2007 remain unchanged."

I give little if no weight to both Dr. Hines' report and addendum. Besides not providing any analysis for his conclusion, Dr. Hines seems to be unaware or, for some unknown reason, does not give any consideration to the reports by Dr. Pritchard or the assessments by Mr. Uribe's treating pyschologist, Dr. Araujo de Sorkin and his treating psychiatrist, Dr. Ester Elliot.

As well, I find that Dr. Hines April assessment and the paper review addendum when compared to the two day in-depth testing of Dr. Morris and the assessment of Mr. Uribe's treating psychologist is very superficial. Accordingly, I cannot, in the light of Dr. Morris' thorough assessment, and the report of Mr. Uribe's treating psychologist, Dr. Pilowski, give Dr. Hines April report or his addendum much weight.

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Vellipuram and State Farm Arbitration, 2006-12-08

The Insurer's Medical Evidence

(a) Dr. R.B. Hines

Dr. Hines is a psychiatrist who assessed Mr. Vellipuram in June 2005 at the request of the Insurer. In his report, Dr. Hines noted that the Applicant was taking three or four tablets of Tylenol 3 a week, as needed, for pain. Regarding psychological complaints, Mr. Vellipuram noted continuing nightmares, problems falling and staying asleep, sadness, anger at his situation, fear and anxiety driving, and poor energy, all in the context of continued pain and stress due to, amongst other things, his inability to work. He stated that his marriage was not happy.

Dr. Hines reported the Applicant as co-operative, calm and relaxed. He was of the view that the Applicant did not appear to be in any acute physical or emotional distress, he did not appear to be sleep deprived, and thought it odd that the Applicant reported weight gain notwithstanding a reported loss of appetite.

Dr. Hines concluded that Mr. Vellipuram did not presently have a psychiatric diagnosis or illness and, from a psychiatric perspective, did not meet the "any occupation" test.

In his verbal testimony, Dr. Hines noted that he used an interpreter about 90% of the time during his interview. He reaffirmed that the Applicant did not appear depressed, that he did not have a flat effect, that his energy appeared normal and that he was alert and focussed. Nonetheless, Dr. Hines testified that while his opinion was that the intensity and duration of the Applicant's symptoms could not justify a psychological diagnosis, this did not mean that the Applicant was not, in fact, experiencing what he had related, or that Dr. Hines was denying that Mr. Vellipuram had those symptoms.

In cross-examination, Dr. Hines conceded the obvious limitations of his area of expertise. His opinion that the Applicant's speech was clear and coherent was based on asking the interpreter. Measuring a person's energy level based on how they look is not necessarily accurate. There is no fool-proof way of determining what is going on in another human being. Dr. Hines indicated, as well, that he did not disbelieve Mr. Vellipuram's complaint of loss of appetite. Dr. Hines agreed that one can gain weight with less activity, even with a reduced appetite.

As stated in *Quattrocchi and State Farm Mutual Automobile Insurance Company* (FSCO A-006854, September 29, 1997), the lack of a medical diagnosis is not fatal to a claim. Disability is decided on function, not on meeting the precise criteria of a medical disorder. I find Dr.Hines' evidence as to the reliability of the Applicant's complaints and his ability to perform the essential tasks of his pre-accident employment to be of little assistance.

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Brooks and Wawanesa Arbitration, 2002-03-06

Ms. Brooks was assessed by Dr. Brian Hines, a psychiatrist, at the request of Wawanesa in July 2000. Dr. Hines testified that he concurred that Ms. Brooks may have suffered PTSD but felt that she had recovered by the time he interviewed her in August 2000. He was not asked about it and

gave no opinion with respect to Dr. Butler's distinction between acute and chronic forms of PTSD. He also concurred that Ms. Brooks suffered from a Major Depressive Disorder but felt that it was of a mild to moderate degree and should not result in impairment to her level of function. It was also his opinion that the depression was no longer related to the car accident but by this time was related to characterological and psychological issues such as the loss of her son and the ending of a romantic relationship in the months prior to the accident...

...I have considered the evidence of Dr. Robert Hines. I note that he agreed with Dr. Butler's initial diagnoses of PTSD and Major Depression but believes that these conditions were either resolved or no longer disabling. Dr. Hines saw Ms. Brooks in August 2000. I am unable to extrapolate back six months to conclude on the basis of Dr. Hines'opinion that Ms. Brooks was able to perform the essential tasks of her employment on February 16, 2000. As for Dr. Hines' opinion of the causes of Ms. Brooks 'continuing symptoms, I prefer the evidence of Ms. Brooks and her friend, Heather Osmand, as well as her son, Tren, that the ending of a romantic relationship was of no particular significance to her, and while the death of her son was a devastating event, she was, by the end of 1997, recovering and getting on with her life. This is not to say that the death of her son did not remain an issue for her as indicated in the report of Dr. Butler, [See note 3 below.] however, the evidence indicates that she was coping and able to function despite this loss, in the weeks and months leading up to the motor vehicle accident.