

*CZOMBOS v WAWANESA*

In this important catastrophic impairment decision, Arbitrator Marvin Huberman applied both the ‘marked impairment’ and ‘55% whole person impairment’ definitions finding that the Applicant had suffered a catastrophic impairment by either definition.

The Applicant had a complicated history involving several motor vehicle accidents and work-related injuries before being involved in the subject accident on June 29, 2009. The Insurer, Wawanesa, argued extensively that the Applicant’s condition was not a result of the subject accident, but rather a product of her other incidents.

In his decision, Arbitrator Huberman reviewed and applied the “thin skull rule” from the Supreme Court of Canada decision of *Athey v Leonati*. He found that the Applicant was “an emotional thin skull” and that the subject accident was of “causative significance” to her current condition.

The Insurer challenged the evidence of Dr. John Thornton, psychiatrist, who made use of the SPECT scan in his report and testimony. SPECT, or Single-Photon Emission Computed Tomography, is a nuclear imaging technique that shows blood profusion in the brain. These results can then be correlated with the patient’s reported mental or behavioural symptoms. Arbitrator Huberman accepted Dr. Thornton’s evidence on the SPECT scan’s utility as well as his findings that the Applicant sustained a closed brain injury in the MVA.

Despite Wawanesa’s challenges to the use of Digital Motion X-ray (DMX) technology, Arbitrator Huberman accepted the evidence of Dr. John Baird, chiropractor, and Dr. Don Ranney, orthopaedic specialist, who testified that the Applicant was suffering from an upper cervical injury defined in the AMA Guides as Loss of Motion Segment Integrity.

With the assistance of the above mentioned expert opinions, along with the utilization of objective evidence offered by the DMX and SPECT scans, the arbitrator was able to conclude that the applicant sustained a significant insult at the C1/C2 vertebrae (also known as the cranio-cervical junction) in the MVA.

According to the evidence of Drs. Baird and Ranney, this type of injury is often misdiagnosed as whiplash, a soft-tissue injury that heals within months. However, in this case, the tissue injured at the cranio-cervical junction were the alar and transverse ligaments. These ligaments, once stretched or torn, do not re-generate and therefore, the claimant is left with a permanent condition characterized by many of the following symptoms:

Headaches;

Dizziness;

Anger outbursts;

Vertigo; and

Hearing issues.

The above is not a comprehensive list of symptoms nor do they always occur. The symptom timing and type will depend on the specific areas being affected by the abnormal vertebral movement caused by damaged ligaments. This movement can disrupt the smooth flow of blood and cerebral spinal fluid within the spinal cord, which in turn disrupts the flow of blood and spinal fluid to and from the brain.

Wawanesa also challenged the evidence of Rod Hare, registered kinesiologist, who provided whole person impairment ratings in accordance with the AMA Guides, second edition. The arbitrator found that Mr. Hare, who has lectured nationally on the completion of whole person impairment ratings, was well within his expertise and scope of practise in providing evidence on the Applicant's impairment.

Arbitrator Huberman concluded that the Applicant had suffered an overall Class 4 (marked) impairment due to mental or behavioural disorders. This alone qualified the Applicant as catastrophically impaired, but Arbitrator Huberman went further. He also found that she had a combined whole person impairment rating of 65%, which surpassed the 55% threshold for catastrophic impairment. Thus, the Applicant met both definitions for catastrophic impairment.