

CUMING,
GILLESPIE &
RAYMAKER
LAWYERS

“THE REPORTER”

A Publication from Cuming, Gillespie & Raymaker

FIRM NEWS

2007 has been a busy and exciting year for McNally Cuming Raymaker, now Cuming Gillespie & Raymaker. The firm was involved in a number of mediations, Judicial Dispute Resolutions and a long trial that ended in June. July also saw the **retirement of Bill McNally** and the addition of Craig Gillespie to the partnership. The firm was founded by Bill McNally and through its various stages of growth has always been rooted in providing plaintiffs with **the highest quality legal advice and service**. We are all proud of Bill’s legacy and look forward to building on it.



www.cuminggillespie.com

With the firm name change we have also introduced a **new website** and this bi-yearly newsletter which we hope will be informative to lawyers, clients and caregivers.

Cuming Gillespie & Raymaker remains committed to providing the best legal service for plaintiffs who have suffered serious personal injury or securities/investment losses. We are always accepting new referrals and value the trust and confidence a referral shows. If you have a conflict or a matter that is outside your area of practice, please feel free to call us.

LITIGATION PARTNERS

CG&R is always looking for new and innovative ways to better serve our clients. In some situations working with other firms has allowed us to combine resources and expertise to achieve great results. We have fostered co-counsel relationships on files with firms in Calgary, Edmonton, Vancouver, Winnipeg and Toronto as well as a number of US Cities. We are always open to considering and partnering on any new litigation projects. Our lawyers are also always looking for opportunities to be involved in trials. If you have a case where you think a litigation partner or a trial partner would be helpful, please give us a call.

Cuming Gillespie & Raymaker puts clients first. In addition to providing superior legal service we are also committed to providing compassion and support for clients and families who are dealing with difficult and life changing events.

To read about what clients are saying please visit our website and click on “Testimonials”.

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NEGLIGENCE

SECURITIES
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LOSSES

CUMING, GILLESPIE & RAYMAKER
#1500, 635-8TH AVE. S.W.
CALGARY, AB, T2P 3M3

TEL: 403-571-0555
FAX: 403-232-8818
WWW.CUMINGGILLESPIE.COM

Cuming, Gillespie & Raymaker

Staying Current: Case Law Updates

November 1, 2007

SETTLEMENTS AND VERDICTS

CG&R has been active in the courtroom and has also been involved in a number of private mediations and Judicial Dispute Resolution Conferences. In 2006 we were successful in certifying one of the first class actions brought under the new class action legislation. We were also involved in an oil and gas leasehold dispute that is currently on reserve at the Court of Appeal. CG&R also ran two professional negligence trials in 2006 and 2007 and we are currently waiting on a reserve decision in the 2007 matter.



CG&R successfully mediated a number of claims including a large investment loss matter, a serious injury claim involving complex SEF 44 issues and a number of chronic pain matters. Details of the settlements are confidential but all were resolved in a very positive and favorable manner for our clients.



Multiple Injuries with Chronic Pain

In *Park v. Heimbeckner*, 2007 ABQB, 386 the 29 year old male plaintiff suffered serious injuries when he was ejected from a vehicle involved in a

high speed collision on December 30th, 2001. The plaintiff suffered eight fractures to his cervical spine, a minor closed head injury, a severe injury to his broken right foot and a torn rotator cuff in his left shoulder.

Additionally, the plaintiff suffered from a laceration on his scalp which required a skin graft and four surgical procedures. The court concluded that as a result of his injuries the plaintiff was in constant severe pain and suffered from bouts of depression and sexual dysfunction. For the significant injuries and ongoing chronic pain the court awarded \$160,000.00 for general damages.

Mild to Moderate Soft Tissue Injury at Low Speed

In *Gerlitz v. Lee*, 2007 ABQB 495, the 25 year old male plaintiff was rear ended in August of 2001. The evidence suggested that there was minimal damage to either vehicle and that the speed of the defendant vehicle was around 4.5 km/h. The plaintiff suffered from neck pain and back pain after the collision. Notwithstanding treatment the plaintiff complained of ongoing back pain to the time of trial (6 years). The court concluded that collision caused a "whiplash type injury in the mild to moderate range" and awarded \$35,000.00 in general damages.

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COURTHOUSE

It should be noted that at the time of the Collision the Plaintiff was a martial arts instructor. He claimed between \$700,000 - \$3,000,000.00 in loss of income and earning capacity as a result of his inability to run his business. The court accepted that loss of earning capacity can be proven on a simple probability basis however found no evidence to justify a large award. The court awarded \$68,000.00 for loss of income.

Minor Brain Injury, Fractured Wrist and Moderate Soft Tissue Injuries



In *Seich v. Tobin*, 2007 ABQB 492 the 21 year old male plaintiff was injured when his motorcycle struck a van. Liability was in issue and apportioned equally. The court concluded that the plaintiff sustained a fractured wrist with ongoing impairment, moderate soft tissue injuries to his neck and back which lasted 3-4 years, and a mild brain injury that did not cause any long term deficits. The court awarded \$80,000.00 in general damages and reduced the amount by half for liability.

Production of Medical Charts



In *Prasad v. Weber*, 2007 ABQB, the female plaintiff filed a claim alleging ongoing injuries to her neck, shoulders and back etc. The injuries were alleged to be permanent and ongoing - i.e. "chronic". At discovery defense counsel requested a number of medical charts from the Alberta Statement of Benefits. The plaintiff refused on the basis that they were not relevant.

The Master directed the charts be produced and the Justice, on appeal, agreed. The court concluded that the starting point for relevancy and materiality was the pleadings. In this case, the pleadings alleged an ongoing "chronic" injury. The defense maintained that the injuries could have been caused by other sources. The court agreed that the "mere fact that a plaintiff puts their health into issue does not entitle a Defendant to review the Plaintiff's entire medical history and to the medical chart records of any treating physician..." However, the court went on to say that when the Plaintiff "raised the issue of her severe and ongoing pain..."

the records of any treatment provider that could disclose pain would be relevant. The court directed that the records be ordered and produced subject to any objections over relevance.

This decision seems to suggest that if the allegations are in the nature of an ongoing "chronic" injury the entire medical history may be relevant, and at the very least, needs to be canvassed.

Soft Tissue and TMJ Injury

In *Sra v. Zhu*, 2007 ABQB 426, the 54 year old male plaintiff was injured when he was t-boned in a red light intersection collision. He suffered from lower back pain, neck pain and TMJ pain. The court was of the view that he had pre-existing injuries and was also in a subsequent accident. The court had concerns over the plaintiff's credibility. The court held that his injuries resolved within three to four months. The court awarded \$13,000.00 in general damages.

PUBLICATIONS

CG&R is committed to staying current with the latest trends in litigation tactics, evidence, civil practice and case law. We continue to support the Alberta Civil Trial Lawyers Association publication "The Barrister" and continue to remain active participants in continuing education and community education. Our most recent publications are described below and full content can be found on our website at : www.cuminggillespie.com

"To Produce a Document or Not"

An overview of the discovery of records in the context of a personal injury claim. A number of common production request are considered including employment files, Employment Insurance Records, WCB records and other third party medical records.

"Causation is King"

An overview of the law causation. A review of some theories of causation including "loss of chance" and "material contribution" and where the court currently stands.

"Where to Find the Money"

An overview of the various sources of funding available to individuals who have suffered catastrophic injuries. Sources of recovery include AISH, Disability Insurance and Tort Claims. This paper will be presented to the Canadian Paraplegic National Peer Conference in late 2007.

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IN THE
COMMUNITY

OUR LAWYERS



James Cuming

James continues to practice extensively in the area of serious personal injury litigation, investment losses and class actions. In April, James was involved in a week long mediation involving investor losses totaling over six million dollars. The claims were all successfully resolved at the mediation. Recently resigned his position with the Alberta Civil Trial Lawyers Association to take up a position with the Canadian Bar Association to continue the challenge against the minor injury cap.



Craig Gillespie

Craig continues to practice extensively in the area of serious personal injury litigation, investment losses and class actions. Craig has also assumed a great deal of the firm's professional negligence practice that was formerly headed by Bill McNally. Craig continues to provide case law updates for the Canadian Bar Association and is on the executive of the Alberta Civil Trial Lawyers Association.



Pamela Fischer

Pam continues to practice extensively in the areas of serious personal injury and professional negligence litigation. Pam conducted a number of mediations and Judicial Dispute Resolutions throughout the year and is awaiting the results of a complex professional negligence trial she conducted with Bill McNally.



Darryl Raymaker

Darryl has moved into a position of Counsel and continues to provide advice and support to our lawyers, staff and clients. Darryl continues to remain involved in almost every aspect of Calgary community service and political interests. Darryl was the Celebrity Roaster at the spring Judges Dinner and by all accounts did a fantastic job.

CG&R continues to remain active in the community and we are proud of a number of initiatives we continue to support and sponsor. We continue to be the title sponsor of the Canadian Paraplegic Association Golf Tournament and are also title sponsor's of the Canadian Paraplegic Association Peer Odyssey Program. The CPA provides valuable services to injured Albertans and we are proud to call them a partner. www.canparaplegic.com

We are also the title sponsor of the Jeff Schlender Memorial Softball Tournament. Jeff's life was tragically cut short in a motor vehicle accident in the Crowsnest Pass. CG&R successfully represented Jeff's Estate and Family and are proud to support the charity fundraiser held in his memory. To date almost \$10,000.00 has been raised for the Crowsnest Pass and area minor hockey association.