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DAMAGES FOR LOSS OF MARRIAGE/INTERDEPENDENCY BENEFITS: *UNIVERSITY OF REGINA V MIRANDA BILETSKI,* 2019 SKCA 44

May a severely injured plaintiff recover separate damages based on the fact that they are statistically less likely to “couple up?” In a decision related on May 23, 2019, the Saskatchewan Court of Appeal unanimously answered this question in the affirmative.

The Plaintiff, Miranda Biletski, was 16 year old competitive swimmer at the time of the subject accident. She was rendered a quadriplegic when she dived into a pool owned by the Defendant University. Ms. Biletski had not performed her dive exactly as instructed, and subsequently hit her head on the bottom of the pool. The starting blocks were located at the shallower end of the pool, which had been a common design when the pool was built. One of the Plaintiff’s experts opined that the University was negligent for allowing the blocks to remain at the shallower end.

At trial, the jury found that the University had been negligent, and awarded Ms. Biletski over \$9 million in damages. The jury dismissed the University’s third party claim against the Swim Club.

On Appeal, the Saskatchewan Court of Appeal found that, while the Plaintiff had not performed her dive exactly as instructed, it was open for the jury to find that the University was negligent in allowing the use of starting blocks at the shallower end of the pool because there was another, safer place to mount the blocks. The Court of Appeal further found that there was a sufficient basis for the jury to conclude that, if the dive had occurred at the pool’s deeper end, the Plaintiff would not have suffered the injuries she did. Moreover, the Court of Appeal found that there was a basis in evidence for the jury to conclude that the Plaintiff slipped because of the University’s failure to clean the diving blocks. Finally, it was open to the jury to find that the Plaintiff was not contributorily negligent.

Most notably, beginning at paragraph 120 of the decision, the Saskatchewan Court of Appeal found that there was evidence to support the jury's award of \$879,000 for "loss of marriage and interdependency benefits". This evidence came from the Plaintiff's economic expert, who had testified that the Plaintiff's injuries made her "statistically less likely than non-injured persons of her cohort to 'couple up' and to remain 'coupled up,'" and that this resulted in a loss of \$1,464 million, assuming that her injury had also reduced her life expectancy.

Ultimately, the jury awarded the Plaintiff 60 percent of the amount claimed. The Court of Appeal stated that the jury must therefore have concluded that the Plaintiff's chances of entering into an interdependent relationship were not fully impaired.

While the legal basis for this award is not new (see the British Columbia Court of Appeal's decision in *Reekie v Messervy* (1989), 59 DLR (4th) 481 (BCCA) (leave to appeal to SCC refused), this is a much more recent example of its application to the facts of a particular case.

I would suggest, however, that this head of damage will be reserved for only the most severely injured plaintiffs.