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# PARENTING AS AN INTERVENING CAUSE? *HUSSACK* V. *CHILLIWACK SCHOOL DISTRICT NO. 33*, 2009 BCSC 852

In *Hussack*, Justice Boyd awarded a young man nearly $1.4 million for injuries arising from a school field hockey accident. Given its unusual facts, the case has stirred controversy and attracted local media attention. It arguably broadens the potential scope of liability for teachers or coaches, and may have a significant chilling effect on any physical education or sports programs.

However, it also raises other issues that should concern all casualty insurers; this article focuses particularly on the issue of causation. The court rejected defence arguments that the Plaintiff's post-injury mental illness was caused by unorthodox parenting before and after the accident, rather than by the field hockey accident itself.

## FACTS AND BACKGROUND

In 1998, the Plaintiff was struck in the face by a classmate's stick during a field hockey game in his Grade 7 physical education class. He suffered lacerations and soft-tissue swelling. Over several months, he then developed headaches, weakness, fatigue, difficulty concentrating and problems with memory. These symptoms worsened and eventually included tremors, visual distortions, twitching, and chest pain. The Plaintiff's school attendance became sporadic and he ultimately withdrew from school before completing Grade 10. None of the experts at trial suggested the Plaintiff's complaints were feigned or that he was malingering.

At the time of the trial, the Plaintiff lived a sedentary life at home with his father, who attended to his every need. Justice Boyd recognized that the relationship between the Plaintiff and his father touched on nearly every aspect of this case. The father was unusually overprotective. He did not appear to allow the Plaintiff any opportunity to develop any independence or make his own decisions. Even before the accident, the father was repeatedly ejected from the Plaintiff's schools for

DOLDEN WALLACE FOLICK LLP INSURANCE LAWYERS
TENTH FLOOR – 888 DUNSMUIR STREET
VANCOUVER, B.C. V6C 3K4
Tel: 604.689.3222 Fax: 604.689.3777
WWW.DOLDEN.COM

"hovering" around the premises, peering in on the Plaintiff while classes were in session, and frequently interrupting the Plaintiff's classes to bring him snacks. On occasion, he was caught surreptitiously taking photographs of the Plaintiff and other students.

After the field hockey accident, the Plaintiff's father took an extremely active role in his son's medical care, frequently suggesting alternative investigations to his son's physicians, and demanding specialist consultations and MRI scans. The Plaintiff's family doctor described him as "obsessive". The Plaintiff's father attended all of the Plaintiff's medical appointments, repeatedly "prompting" the Plaintiff to describe his symptoms, particularly the more unusual ones. The Plaintiff's physicians could not find any physical origin for his ongoing complaints, but all suggestions of psychological or psychiatric treatment were flatly refused by his father. Nor would he permit his son to take any psychiatric medication prescribed by the family doctor.

At trial, the parties agreed that the Plaintiff had initially suffered at least a mild concussion, and that he had since developed a "full blown" somatoform disorder, *i.e.*, a psychological disorder in which a person exhibits physical complaints without any apparent physical origin. However, the parties disagreed about the cause of that disorder. The Plaintiff argued it was caused by the injuries he suffered in the accident; the Defendants argued that the disorder's initial stages pre-dated the accident and that he would have likely developed the debilitating psychological condition in any event, regardless of the accident. Further, the Defence argued that the father's actions, particularly his refusal to obtain psychological treatment for the Plaintiff and his obsession over the Plaintiff's symptoms, constituted an intervening causative force that broke the chain of causation.

## THE DECISION

Justice Boyd agreed with the Plaintiff's position that "but for" the field hockey injury, the Plaintiff would *not* have developed the somatoform disorder, because there was insufficient evidence of pre-accident anxiety, depression or other symptoms related to the disorder. Rather, Justice Boyd held that the Plaintiff's extremely unhealthy family dynamic had left the Plaintiff susceptible to unusually extreme injury from even a minor accident (often referred to as a "thin skull" scenario).

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WWW.DOLDEN.COM

Justice Boyd also rejected the defence argument that the father's actions constituted an intervening cause. It was not unreasonable to expect parents to take an active and concerned role in a child's health following an accident (even a minor one). Notwithstanding its extreme nature, she held that the father's "over-caring, over-protective and over-solicitous behaviour", all of which existed before the accident, at most contributed to the Plaintiff's vulnerability – it did not cause his subsequent injuries. Further, the Defendant could reasonably foresee that parents in general – and the Plaintiff's father in particular – might have an extreme reaction to an injury at school. Accordingly, she held that the doctrine of intervening act could not apply in this case.

The decision is currently under appeal.

## PRACTICAL IMPLICATIONS FOR INSURERS

*Hussack* illustrates the challenging and unpredictable nature of litigation involving injured children, particularly when those injuries result in mental illness. While the case may reflect the Court's reluctance to put parents "on trial", it is now difficult to imagine that a Defendant could ever successfully argue that negative parenting could constitute an intervening cause, short of a parent actively and physically harming a child plaintiff. Pursuant to this ruling, even extreme reactions by parents could be foreseeable, particularly when the parties are known to each other. The decision suggests that insurers should be exceptionally careful about proceeding to trial in such cases.

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**AUTHOR** Ryan M. Grist
*Direct Line*: 604-891-0357 *E-mail:* rgrist@dolden.com

**EDITOR** Paul C. Dawson
*Direct Line*: 604-891-0378 *E-mail:* pdawson@dolden.com