Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-34

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Antoine Fréchette**
APPEARANCES:	**The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms. Dianne Pemkowski.**
HEARING DATE:	**August 19, 2002**
ISSUE(S):	**Entitlement to further chiropractic treatment benefits.**
RELEVANT SECTIONS:	**Section 136(1)(a) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act')**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on December 18, 2000, and sustained injuries in this accident. On December 19, 2000, he attended at the office of [text deleted], a chiropractor, and his primary complaints at that time included neck pain and stiffness, as well as pain between his shoulder blades with some discomfort radiating into his lower back.

At the time of the motor vehicle accident, the Appellant was employed as a driver by [text deleted] However, the union of which the Appellant was a member was on strike against [text

deleted] and, as a result, the Appellant was not engaged in his regular work activities at the time of the motor vehicle accident.

In respect of the injuries sustained in the accident, the Appellant commenced receiving chiropractic treatments from [Appellant's chiropractor #1], and MPIC reimbursed the Appellant for the cost of these treatments. [Appellant's chiropractor #1] submitted a treatment plan to MPIC in October 2001 in which she indicated that the Appellant had been discharged from any further treatment after his last visit on September 24, 2001. In this report, [Appellant's chiropractor #1] stated that the Appellant's complaints were non-specific and generally followed increased physical activity.

At the time of the Appellant's discharge from [Appellant's chiropractor #1's] care, he advised [Appellant's chiropractor #1] that he was concerned about his ability to carry out his work activities without physical problems when he would be recalled to work after the strike is settled. [Appellant's chiropractor #1] advised the Appellant to raise these concerns with his MPIC adjuster, and the Appellant subsequently advised [Appellant's chiropractor #1] that he had done so.

Subsequent to September 24, 2001, the strike between the Appellant's union and his employer was settled, and the Appellant returned to work at [text deleted] as a driver. However, on November 13, 2001, the Appellant returned to [Appellant's chiropractor #1's] office with specific complaints of neck and mid-back pain. He advised [Appellant's chiropractor #1] that things had gone very well until his return to work. He further advised [Appellant's chiropractor #1] that as a result of lifting "packer bags" that weighed 11 to 24 pounds in the course of his

work, he developed significant neck and mid-back pain which he had never suffered in the past during the course of his employment.

[Appellant's chiropractor #1] wrote to MPIC on November 13, 2001, and provided a Treatment Plan Report which indicated that the Appellant should undergo a treatment plan of 18 visits, at which time he would be discharged from any further treatment.

Upon receipt of that request, the case manager referred the medical file to [text deleted], a chiropractic consultant with the Health Care Services team, and requested his opinion as to [Appellant's chiropractor #1's] treatment plan. In [MPIC's chiropractor's] report to the case manager, dated January 2, 2002, he indicated that after reviewing the file, he was of the view that there was no causal connection between the Appellant's current symptoms and the motor vehicle accident in question. [MPIC's chiropractor] was also of the view that the Appellant had received in excess of 60 chiropractic interventions and that by September 24, 2001, he had reached maximum medical improvement and had been discharged from care by [Appellant's chiropractor #1]. [MPIC's chiropractor] stated that based on the nature of the Appellant's employment, it is entirely possible that his job duties or other life-related factors contributed to his symptoms.

On January 2, 2002, the case manager wrote to the Appellant and advised him that as a result of a review by MPIC's Health Care Services team, there was little evidence to support a causal relationship between the Appellant's current symptoms and the motor vehicle accident of December 18, 2000, and, as a result, MPIC would not fund any further chiropractic treatments past his discharge from care as of September 24, 2001.

As a result of the case manager's decision to terminate any further reimbursement of chiropractic treatments, the Appellant applied for a review of the case manager's decision in an application dated January 6, 2002.

By letter dated February 8, 2002, [Appellant's chiropractor #1] wrote to [text deleted], the Internal Review Officer, in support of the Appellant's Application for Review of the case manager's decision.

In this report, [Appellant's chiropractor #1] was of the view that the symptoms about which the Appellant was complaining were a direct result of the injuries he sustained in the motor vehicle accident on December 18, 2000. [Appellant's chiropractor #1] stated:

> Our examination findings accompanied by the history of an accident of this nature and magnitude are consistent with the healing sequel to traumatic injuries to the cervicothoracic and thoracolumbar paraspinal musculature and ligamentous structures. It is well documented throughout medical literature that skeletal muscle and the myofascial planes between the muscles that are injured in this magnitude and nature tend to heal with connective tissue which is laid down in an irregular pattern. This is also true for the associated ligamentous structures and in these structures, the remodelling of these soft tissues can take anywhere from 6 to 18 months. Therefore, healing is considered to be by the formation of scar tissue which is less functional than normal tissue.
>
> As a result, the tissues become weaker, less elastic, more sensitive to pain, less mobile and are subject to periodic exacerbations with increased use or stress. Moreover, it is important to note that it is well documented that there is a statistical increase in the severity of degenerative disc and joint disease of the affected articulations that have been injured.
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> In [the Appellant's] case, the fact that he was off work due to strike during the time of his recovery is a significant factor to consider. Prior to this accident, while he was working, he had no problems with his neck and midback as he engaged in his normal lifting activities. We knew that increased physical activity lent itself to irritating his damaged tissues, but discharged his active file with the optimism that he could work through his discomforts or that they would be of the magnitude and nature that would not require resuming active care. This did not happen. However, we did not know at the time of discharge whether he would be going back to work next week, next month or next year. He had recovered sufficiently for a man who was not working at the time.

> It would appear, in hindsight, that [teh Appellant] should not have been released from active care but rather his treatment should simply have been suspended until we could confirm that his condition relating to his accident was permanent and stationary under the stress of his normal and regular working environment.
>
> His ongoing subjective and objective residuals are secondary to the mechanical properties of the fibrotic nature of the repair process itself and nearing resolution and we are currently in the process of once again discharging this patient. It is my clinical opinion that these residuals are a direct result of the injuries he sustained in the accident of December 18, 2000. [*underlining added*]

On February 12, 2002, the Internal Review Officer wrote to [MPIC's chiropractor], enclosing [Appellant's chiropractor #1's] medical report dated February 8, 2002. The Internal Review Officer requested [MPIC's chiropractor] to review the report and advise him whether or not the report established a causal connection between the symptoms and the car accident.

On February 13, 2002, [MPIC's chiropractor] wrote to the Internal Review Officer and made the following comments:

1. [Appellant's chiropractor #1] had treated the Appellant and, while he was under her care, he received approximately 60 chiropractic interventions until September 2001 when he was discharged from her care.
2. In the Initial Health Care Report supplied by [Appellant's chiropractor #1] in December 2000, she indicated that there was a previous injury with early degenerative joint disease present prior to this motor vehicle accident.
3. During the balance of this claim file, the Appellant was not employed at his occupation due to a strike. It was [MPIC's chiropractor's] opinion that this period of unemployment could have precipitated a certain amount of deconditioning, given the lengthy time off, and there was no indication in [Appellant's chiropractor #1's] file that there was any therapeutic exercise prescribed for the management of any deconditioning that may have resulted from

> the time away from work. Although [Appellant's chiropractor #1] noted that the Appellant was never deemed to be deconditioned, it would seem to [MPIC's chiropractor] that given the lengthy time off, it would be more likely than not that some deconditioning would have taken place.

[MPIC's chiropractor] concluded his report by saying that in his opinion, there was not sufficient evidence to establish that, on the balance of probabilities, the Appellant's current difficulties were the result of the motor vehicle accident in question. He further stated that, in his opinion, the Appellant's symptoms were more probably related to his return to work following a prolonged break from those duties.

The Internal Review Officer, in a decision dated February 25, 2002, advised the Appellant that the Application for Review was rejected and he confirmed the case manager's decision not to fund any further chiropractic treatments. The Internal Review Officer stated that [MPIC's chiropractor] had reviewed the issue of causation in light of the views expressed by [Appellant's chiropractor #1] but continued to hold the opinion that the evidence does not support, on the balance of probabilities, a causal connection between the current symptoms and the motor vehicle accident.

As a result thereof, the Appellant filed a Notice of Appeal to this Commission, dated March 26, 2002.

The Commission received two medical reports from [Appellant's chiropractor #1] and [Appellant's chiropractor #2], both dated May 24, 2002. In her report dated May 24, 2002,

[Appellant's chiropractor #1] takes issue with several comments made by [MPIC's chiropractor] in his report dated February 13, 2002. In this report, [MPIC's chiropractor] states that:

> In the Initial Report supplied by [Appellant's chiropractor #1] in December 2000, he indicated that there was a previous injury with early degenerative joint disease present prior to this motor vehicle collision.

[Appellant's chiropractor #1] states that this statement is unfairly misleading in its vague manner and indicates that in her report to the Internal Review Officer, dated February 8, 2000, she clearly defined a workplace injury which occurred on April 20, 2000. The Appellant complained about lower back pain on the left side, pain in the left leg, and did not complain about any pain to his upper back or neck at all. The Appellant was treated for the incident and was released from [Appellant's chiropractor #1's] care on July 20, 2000. [Appellant's chiropractor #1] further states that the Appellant consistently asserted that he has never experienced neck or upper back pain in his life prior to the motor vehicle accident on December 18, 2000.

[Appellant's chiropractor #1] further rejects [MPIC's chiropractor's] view that the symptoms the Appellant complained about above related to a certain amount of deconditioning due to the lengthy lay-off from his employment. [Appellant's chiropractor #1] indicates that at the time of the Appellant's discharge at the end of September 2001, he did indicate he was still experiencing ongoing non-specific symptoms of stiffness and discomfort in his neck and mid-back following increased physical activity and was concerned about his ability to return to his work activities without problems.

Both [Appellant's chiropractor #1 and Appellant's chiropractor #2], in their respective reports, indicate that notwithstanding the discharge from care in September 2001, the Appellant had not made a full recovery from the injuries sustained in the accident and continued to suffer from

fibrotic, poorly healed tissue in the month of September. Both [Appellant's chiropractor #1 and Appellant's chiropractor #2] confirm that, in their view, the Appellant's complaints in November 2001 in respect of neck pain and stiffness and discomfort to his lower back are a direct result of the motor vehicle accident.

In her report dated May 24, 2002, [Appellant's chiropractor #1] again confirms that the Appellant should not have been released from his active care in September 2001. Rather, she asserts that this treatment should simply have been suspended until she could confirm that his condition relating to his accident was permanent and stationary under the stress of his normal and regular working environment.

[MPIC's chiropractor] was requested by MPIC to comment on the medical reports of [Appellant's chiropractor #1 and Appellant's chiropractor #2], both dated May 24, 2002. [MPIC's chiropractor's] report to MPIC, dated August 1, 2002, rejects the opinions of [Appellant's chiropractor #1 and Appellant's chiropractor #2] and concludes that in his opinion, on the balance of probabilities, the Appellant had reached his maximum pre-accident benefit by September 2001 and that his onset of neck and interscapular pain in November 2001 was, on the balance of probabilities, related to his reintegration into the workforce after many months of absence from his job duties. [MPIC's chiropractor] also confirms his early opinion that there is no causal connection between the motor vehicle accident and the symptoms that the Appellant complained about in November 2001 which would justify MPIC reimbursing the Appellant the cost of 18 chiropractic visits.

At the appeal hearing, the Appellant testified that:

(a) the Workers Compensation injury he sustained on April 20, 2000, was an injury that caused pain to his lower back and left side, and after receiving chiropractic treatments he made a full recovery and was released from chiropractic care on July 20, 2000, and has never suffered any further problems since that time;

(b) he never suffered any pain in his neck or back prior to the motor vehicle accident on December 18, 2000. At the time of the motor vehicle accident, a strike was taking place at his place of employment and, as a result, he was not engaged in his regular activities as a Brink's driver;

(c) at the time of the Appellant's discharge from [Appellant's chiropractor #1's] care in September 2001, he was still experiencing ongoing pain and discomfort in his neck and mid-back following any increased physical activity;

(d) he advised [Appellant's chiropractor #1] of these symptoms and indicated a concern about his ability to return to work without problems;

(e) he was advised by [Appellant's chiropractor #1] to raise this matter with his case manager, and the Appellant testified that he had done so;

(f) the case manager informed him that if he had any problems or needed to resume chiropractic care for injuries related to his motor vehicle accident, MPIC would certainly consider this;

(g) subsequent to his discharge from care in September 2001, the strike was resolved, and he returned to work;

(h) after his return to work, there was an increase in the pain and stiffness to his neck and upper back and, as a result thereof, he returned to [Appellant's chiropractor #1] and advised her of his complaints, and she indicated that he required further chiropractic treatments;

(i) he commenced chiropractic treatments and initially continued them on a regular basis;

(j) at the time of the appeal hearing on August 19, 2002, he was feeling better but had not made a complete recovery;

(k) he was still receiving chiropractic treatments but on a less regular basis than he did in the past;

(l) until the motor vehicle accident occurred, he had never suffered from any pain or stiffness to his neck or upper mid-back. Prior to the motor vehicle accident he had been employed by [text deleted] for approximately 27 years as a driver, and at no time during that period had his work activities caused any problems to his neck or upper back;

(m) after returning to work after the conclusion of the strike in the fall 2001, his only duties were that of driving the [text deleted's] truck, and he did not lift at all during the course of his work day;

(n) notwithstanding this limited physical activity, there was a flare-up of the neck and upper back pain which required chiropractic treatments;

(o) the motor vehicle accident caused the injuries to his neck and upper back, and the chiropractic treatments assisted in restoring his health; and

(p) he had attempted physiotherapy treatments, but these treatments only increased his neck and back symptoms.

At the Internal Review hearing and at this appeal, MPIC has taken the position that the medical evidence does not support a causal connection between the Appellant's current symptoms and the motor vehicle accident of December 18, 2000. MPIC has asserted that the symptoms exhibited by the Appellant were caused by the work activities on his return to work after a lengthy absence and that the motor vehicle accident had no connection to the Appellant's physical problems. As a result, MPIC submitted that there was no obligation under the MPIC Act or Regulations to reimburse the Appellant in respect of the cost of chiropractic treatments.

The Internal Review Officer, in rejecting the Application for Review, adopted the opinions of the chiropractic consultant, [MPIC's chiropractor], who stated in his report to the case manager, dated December 20, 2001, that:

> In an October 2001 Treatment Plan Report, [Appellant's chiropractor #1] made it very clear that this claimant was discharged as his last visit of September 24, 2001, his complaints were very non-specific and followed increased physical activity. There was a minimal of objective findings.
>
> In November, the claimant again presented with exacerbation of neck pain and stiffness and interscapular pain. There are significant objective findings. After reviewing this information, it is my opinion the file contents are not supportive of a probable cause/effect relationship between the claimant's current symptoms and the motor vehicle collision in question. This claimant had in excess of 60 chiropractic interventions and apparently by September 24, had reached his maximum medical improvement and was discharged from care. The fact that the claimant presented with similar findings some weeks later, does not, in and of itself, prove a cause/effect relationship. Based on the nature of this claimant's employment, it is entirely possible that he has job or other life related factors, which contributed to his symptoms.

The Internal Review Officer, in his decision dated February 25, 2002, wherein he rejected the Application for Review, stated:

> [Text deleted] made the decision under Review, on January 2, 2002. He decided that the corporation would no longer fund chiropractic treatments since the evidence did not support a causal connection between your current symptoms and the motor vehicle accident of December 18, 2000.
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> [Text deleted's] decision was a reasonable one when it was made since it followed the advice contained in [MPIC's chiropractor's] assessment of your file on December 20, 2001. In the absence of new information, I would have had no reason to interfere with this decision. The issue now is whether the new report from [Appellant's chiropractor #1] removes the basis for [text deleted's] decision.
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> The recent opinion from [MPIC's chiropractor] reconsiders the issue of causation in the light of the views provided by [Appellant's chiropractor #1]. [MPIC's chiropractor] continues to be of the opinion that the evidence does not support, on a balance of probabilities, a causal connection between your current symptoms and the motor vehicle accident of December 18, 2000. [MPIC's chiropractor's] opinion, therefore, continues to provide a firm basis for the decision to discontinue your chiropractic benefits.

> I accept [MPIC's chiropractor's] advice. It follows that this Review must confirm the claims decision dated January 2, 2002.

[MPIC's chiropractor] confirmed his opinion again in a memorandum to the Internal Review Officer, dated August 1, 2002.

At the appeal hearing, MPIC defended the decision made by the Internal Review Officer and requested that the appeal in this matter be dismissed.

Discussion

The issues under appeal are governed by Section 136(1)(a) of the MPIC Act.

Section 136(1)(a) of the MPIC Act provides:

> **Reimbursement of victim for various expenses**
> **136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
>
> (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care.

The Commission notes that in arriving at his conclusion, [MPIC's chiropractor] took the position that the pain suffered by the Appellant in November 2001 was not caused by the motor vehicle accident but solely by the reintegration of the Appellant into the workforce after many months of absence from his job duties. The Commission finds that [MPIC's chiropractor] failed to consider whether the injuries sustained in the motor vehicle accident materially contributed to the Appellant's symptoms of neck and mid-back pain in November 2001 which required him to obtain chiropractic treatments. [MPIC's chiropractor] concluded that there was a single cause for the symptoms the Appellant was suffering in November 2001 and, as a result thereof,

[MPIC's chiropractor] failed to consider whether there was a combination of causes which materially contributed to the symptoms that the Appellant was suffering at that time.

The Commission has dealt with the issue of causation in the past. In [text deleed] (decided September 18, 2001), the Commission dealt with the issue of causation under Section 83(1)(a) of the MPIC Act in respect of Income Replacement Indemnity benefits and Section 136(1)(d) of the MPIC Act in respect of travel expenses.

Section 83(1)(a) of the MPIC Act states:

> **Entitlement to I.R.I. for first 180 days**
> **83(1)** A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:
>
> (a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred.

Section 136(1)(d) of the MPIC Act states:

> **Reimbursement of victim for various expenses**
> **136(1)** Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:
>
> (d) such other expenses as may be prescribed by regulation.

The Commission, in the [Text deleted] case, stated:

> In the Review Officer's letter to [Appellant's doctor], he states as follows:
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> > There are really two issues. First, did the 1995 injury cause the 2000 injury? In other words, can it be said that "but for" the 1995 injury, the 2000 injury would not have occurred? Secondly, can it be said that the first injury was a "material cause" of the second one? In other words, even though the injury might have occurred in any event, can it be said that the disability remaining from the

> first injury was a contributing factor in the occurrence of the second injury? In both cases, the standard of proof is simple probability. That is to say either or both of them can be answered "yes" if the connection of the two injuries is more probable than not.

It should be noted that the Internal Review Officer correctly set out the two legal tests for determining causation in respect of motor vehicle claims for bodily injuries which are similar to legal tests as set out in the tort law jurisprudence relating to this matter.

In [Text deleted], the Commission stated:

> The Review Officer correctly set out the two legal tests to deal with causation in these matters. In *Athey v. Leonati et al* (1996), 140 D.L.R. (4th) 235, the Supreme Court dealt extensively with this issue. In a unanimous decision, Mr. Justice Major states:
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> > A. *General Principles*
> > (13) Causation is established where the plaintiff proves to the civil standard on a balance of probabilities that the defendant caused or contributed to the injury: *Snell v. Farrell*, [1990] 2 S.C.R. 311; *McGhee v. National Coal Board*, [1972] 3 All E.R. 1008 (H.L.).
> >
> > (14) The general, but not conclusive, test for causation is the "but for" test, which requires the plaintiff to show that the injury would not have occurred but for the negligence of the defendant: *Horsley v. MacLaren*, [1972] S.C.R. 441.
> >
> > (15) The "but for" test is unworkable in some circumstances, so the courts have recognized that causation is established where the defendant's negligence "materially contributed" to the occurrence of the injury: *Myers v. Peel County Board of Education*; [1981] 2 S.C.R. 21, *Bonnington Castings, Ltd. v. Wardlaw*, [1956] 1 All E.R. 615 (H.L.); *McGhee v. National Coal Board*, supra. A contributing factor is material if it falls outside the de minimis range: *Bonnington Castings, Ltd. v. Wardlaw*, supra; see also *R. v. Pinske* (1988), 30 B.C.L.R. (2d) 114 (B.C.C.A.), aff'd [1989] 2 S.C.R. 979.
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> In *Liebrecht v. Egesz et al*, 135 Man.R. (2d) 206 Justice De Graves, in arriving at his decision, cites *Athey v. Leonati et al* (supra) and states:
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> > (64) Causation must be proved on a balance of probabilities. But it is only necessary by that civil standard of proof to prove that the defendants' negligence materially contributed to the injury.

> (65) On the question of causation Major, J., for the court (S.C.C.) in Athey v. Leonati et al (1996), … restated the principle in the context of competing causes as follows:
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> > "It is not now necessary, nor has it ever been for the plaintiff to establish that the defendant's negligence was the sole cause of the injury.
> >
> > "The applicable principles can be summarized as follows. If the injuries sustained in the motor vehicle accidents caused or contributed to the disc herniation, then the defendants are fully liable for the damages flowing from the herniation. The plaintiff must prove causation by meeting the 'but for' or material contribution test. Future or hypothetical events can be factored into the degrees of probability, but causation of the injury must be determined to be proven or not proven. (p. 245-246)
> > . . .
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> This decision was appealed to the Manitoba Court of Appeal, and on the issue of causation, the Manitoba Court of Appeal unanimously confirmed the decision of Mr. Justice De Graves. (150 Man. R (2d) 257)

Effective, March 1, 1994, the Manitoba Legislature enacted The Manitoba Public Insurance Corporation Act, which provides that all claims arising out of bodily injury from a motor vehicle accident are governed by this Act. The MPIC Act provides for a no-fault insurance program which prohibits court actions to obtain compensation in respect of bodily injuries resulting from motor vehicle accidents.

The legal principles relating to the issue of causation in respect of tort actions relating to claims for bodily injury arising out of motor vehicle accidents have been determined by the Supreme Court of Canada in Athey v. Leonati et al (supra) and by the Manitoba Court of Appeal in Liebrecht v. Egesz et al (supra). In respect of the issue of causation under The Manitoba Public Insurance Corporation Act, the courts in Manitoba, in McMillan v. Thompson (Rural Municipality) 1997, 115 Man. R. (2d) 2 (Man. C.A.) and in Mitchell v. Rhaman, 149 Man. R (2d) 254 (Manitoba Court of Queen's Bench) have dealt with this matter. These two Manitoba

decisions are totally consistent with the decisions in Athey v. Leonati et al (supra) and Liebrecht v. Egesz et al (supra).

In [text deleted], dated April 29, 1997, the Commission stated at page 7:

> Causation is not always based upon exact scientific principles; one must apply experience and conventional wisdom along with proof based on a balance of probabilities.

In J[text deleted] (supra), the Commission stated at page 9:

> In *Athey vs. Leonati* [supra], Justice Major on behalf of the Supreme Court of Canada stated:
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> > (16) In *Snell v. Farrell*, supra, this Court recently confirmed that the plaintiff must prove that the defendant's tortious conduct caused or contributed to the plaintiff's injury. The causation test is not to be applied too rigidly. Causation need not be determined by scientific precision; as Lord Salmon stated in *Alphacell Ltd. v. Woodward*, [1972] 2 All E.R. 475, at p. 490, and as was quoted by Sopinka J. at p. 328, it is "essentially a practical question of fact which can best be answered by ordinary common sense". Although the burden of proof remains with the plaintiff, in some circumstances an inference of causation may be drawn from the evidence without positive scientific proof.
> >
> > (17) It is not now necessary, nor has it ever been, for the plaintiff to establish that the defendant's negligence was the sole cause of the injury. There will frequently be a myriad of other background events which were necessary preconditions to the injury occurring. To borrow an example from Professor Fleming (*The Law of Torts* (8th ed. 1992) at p. 193), a "fire ignited in a wastepaper basket is . . . caused not only by the dropping of a lighted match, but also by the presence of combustible material and oxygen, a failure of the cleaner to empty the basket and so forth". As long as a defendant is part of the cause of an injury, the defendant is liable, even though his act alone was not enough to create the injury. There is no basis for a reduction of liability because of the existence of other preconditions: defendants remain liable for all injuries caused or contributed to by their negligence.
> >
> > (18) This proposition has long been established in the jurisprudence. Lord Reid stated in *McGhee v. National Coal Board*, supra, at p. 1010:
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> > > It has always been the law that a pursuer succeeds if he can shew that fault of the defender caused or materially contributed to his injury. There may have been two separate causes but it is enough if one of the causes arose from fault of the defender. The pursuer does not have to prove that this cause would of itself have been enough to

cause him injury.

In *Mitchell v. Rhaman*, 149 Man. R (2d) 254, the Court dealt with the issue of causation under the MPIC Act and states:

> (14) *The Interpretation Act,* R.S.M. 1987, c. I80 s. 12 states:
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> **Enactments deemed remedial.**
> **12** Every enactment shall be deemed remedial, and shall be given such fair, large, and liberal construction and interpretation as best insures the attainment of its objects.
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> (15) This principle of liberal construction is well accepted in "no fault" compensation schemes such as Workers Compensation and compensation for automobile accidents.
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> . . . For automobile accidents see:
> *McMillan v. Thompson (Rural Municipality)* (1997), 115 Man. R. (2d) 2 (Man. C.A.),
> *Guiboche v. Ford Motor Co. of Canada Ltd.* (1998), 131 Man. R. (2d) 99 (Man. C.A.)
>
> (21) In the *McMillan* case (supra), the plaintiff's claim was against a municipality for the alleged failure to keep a bridge in a proper state of repair and failure to warn potential users of the bridge of its dangerous condition. The Court of Appeal dismissed the plaintiff's action, finding that it was barred by the *Act*. . . .
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> (24) Helper J.A. in her decision refers to an English case at p. 19, paras. 97 and 98, as follows:
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> > An English case is particularly helpful. In ***Minister of Pensions v. Chennell,*** [1947] 1 K.B. 250, a bomb dropped by enemy aircraft was found unexploded by a boy and was taken home. The boy subsequently took the bomb to a public thoroughfare. He tampered with it with the result that it exploded causing injury to a girl. The issue before the court was whether the girl's injury was a war injury under the **Personal Injuries (Emergency Provisions) Act, 1939.**
> >
> > Denning, J. as he then was, considered whether the injury was "caused by" the discharge of the bomb by the enemy (as required by the provisions of the **Act**). He began at p. 252:
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> > > Much depends on the right approach. The best way is to start with the injury and inquire what are the causes of it. Sometimes there may be a single cause. More often there is a combination of causes. If the discharge of a missile or other event may be properly said to be a cause of the injury, that is sufficient to entitle the claimant to an award of a pension, notwithstanding that there may be other causes co-operating to produce it, whether they be antecedent, concurrent or intervening. It is not necessary that the discharge of the

> missile or other event should be 'the' cause of the injury in the sense either of the sole cause or of the effective and predominant cause.

He concluded at p. 257:

> …applying the principles that I have stated, I am of the opinion that in this case the dropping of the bomb by the enemy was a cause of the injury and that the boy's interference was not so powerful an intervening cause as to supersede it. The injury was therefore 'caused by' the dropping of the bomb by the enemy.

(25) Helper J.A. further says at p. 25, para. 107:

> …in my view, the interpretation of s. 70(1) which does justice to the language used and is consistent with the objectives of the legislation as a whole, eliminates any requirement to determine the judicial cause of an accident.

As noted earlier in this decision, the Internal Review Officer in [text deleted] (supra) applied the 'but for' test and the material contribution test as set out in the decisions in Athey v. Leonati et al (supra) and Liebrecht v. Egesz et al (supra) in arriving at his decision. In that case, although the Commission disagreed with the decision of the Internal Review Officer, the Commission did apply those legal tests in determining the issue of causation.

The Commission, therefore, determines that the legal principles established by the Supreme Court of Canada in Athey v. Leonati (supra), by the Manitoba Court of Appeal in Liebrecht v. Egesz (supra), McMillan v. Thompson (supra), and by the Manitoba Court of Queen's Bench in Mitchell v. Rhaman (supra) apply to Section 136(a) of the MPIC Act.

In this appeal, this Commission finds that, in rejecting the Application for Review, the Internal Review Officer failed to apply the correct legal tests in respect of causation. The question that the Internal Review Officer should have addressed in arriving at his decision is not only whether, on the balance of probabilities, the reintegration of the Appellant into the workforce after many

months of absence from his job duties materially contributed to his onset of neck and interscapular pain in November 2001, but also whether the injuries the Appellant suffered in the motor vehicle accident materially contributed to these symptoms. The Commission finds that by failing to consider whether the injuries caused by the motor vehicle accident materially contributed to the Appellant's symptoms in November 2001, the Internal Review Officer erred in rejecting the Appellant's Application for Review.

The Commission, unlike [MPIC's chiropractor], had the opportunity to personally observe the Appellant, to hear his explanation in respect of the matters in dispute, and to assess the manner in which he testified in both examination-in-chief and cross-examination.

The Commission finds that the Appellant was both an honest and impressive witness who gave his testimony in a direct, candid and straightforward manner. The Commission accepts the Appellant's testimony in respect to all issues in dispute between MPIC and himself in this appeal.

The Commission finds that:

(a) the Appellant had not made a complete recovery from the injuries he sustained in the motor vehicle accident when he was discharged from treatment by [Appellant's chiropractor #1] in September 2001;

(b) subsequent to his discharge from treatment, the Appellant continued to experience ongoing pain and discomfort in his neck and mid-back following any increased physical activity;

(c) the Appellant did inform [Appellant's chiropractor #1] and the case manager of his concern about his ability to return to work having regard to his ongoing pain and discomfort in his neck and mid-back;

(d) upon his return to work, the Appellant had not recovered from the injuries he sustained in the motor vehicle accident and continued to suffer from neck and back pain; and

(e) while at work, the Appellant experienced a flare-up of his previous neck and upper back pain which had been caused by the motor vehicle accident and which required chiropractic treatments.

The Commission further finds that [Appellant's chiropractor #1], unlike [MPIC's chiropractor], had personally treated the Appellant over a significant period of time and, unlike [MPIC's chiropractor], had the opportunity to personally assess the Appellant's credibility. [Appellant's chiropractor #1] concluded that, in her view, the symptoms that were suffered by the Appellant to his neck and mid-back in November 2001 were causally connected to the motor vehicle accident which had occurred on December 18, 2000. The Commission, therefore, attaches greater weight to [Appellant's chiropractor #1's] medical opinions than it does to those of [MPIC's chiropractor] and accepts [Appellant's chiropractor #1's] opinions in respect of all matters in dispute between the parties in this appeal. We therefore find that the testimony of the Appellant is corroborated by the medical evidence provided by [Appellant's chiropractor #1].

The Commission determines that the symptoms suffered by the Appellant to his neck and mid-back in November 2001 after his return to work were not due to a single cause but to a combination of causes. The Commission finds that, on the balance of probabilities, the injuries the Appellant sustained in the motor vehicle accident, which occurred on December 18, 2000,

materially contributed to the neck and mid-back pain that he suffered in the month of November 2001 which required him to receive chiropractic treatments.

In conclusion, having regard to the totality of the evidence, the Commission finds that, on the balance of probabilities, the Appellant's onset of neck and interscapular pain in November 2001 after his return to work was caused not only by his reintegration into the workforce after many months of absence from his job duties, but also by the injuries he sustained in the motor vehicle accident. Accordingly, the Commission concludes that MPIC was not justified in refusing to reimburse the Appellant the cost of the chiropractic treatments in question.

Conclusion

The Commission therefore determines that:

A. the Appellant shall be entitled to reimbursement of chiropractic treatments for the period commencing September 24, 2001, and continuing for as long as those treatments were medically required;

B. this matter shall be referred back to MPIC's case manager for determination of the duration of entitlement for reimbursement of chiropractic care and for a determination of what expenses, if any, the Appellant shall be reimbursed for;

C. it shall retain jurisdiction in this matter and, if the parties are unable to agree on the amount of compensation, either party may refer this issue back to this Commission for final determination; and

D. the decision of MPIC's Internal Review Officer, bearing date February 25, 2002, be rescinded and the foregoing substituted for it.

Dated at Winnipeg this 7th day of October, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

ANTOINE FRÉCHETTE