



Your Source for Legal News

FULL DISCLOSURE

Summer | 2011

p1 Powell River Labourer Gets the Compensation He Deserves

p2 Arrive Alive
How Safe is Your Car?

p2 Car Accidents Potential Source of Chronic Pain

p3 Terrafugia's Roadable Aircraft Hits the Highways and the Skyways

p3 In Our Community

p4 Klein Lyons in Saskatchewan Court of Appeal
Pain Pump Class Action Lawsuit

POWELL RIVER LABOURER GETS THE COMPENSATION HE DESERVES *By: Andrea Potter*

In April 2011, Paul Warnett of Klein Lyons reached an incredible settlement for Powell River resident Ray Rogers, successfully negotiating compensation with ICBC for over \$450,000. ICBC had originally offered Rogers \$56,000.

Early one morning in January 2007, Rogers was driving to work when an oncoming vehicle tried to pass a welding truck. The other driver lost control and failed to take evasive action, resulting in a devastating head-on crash that changed Rogers's life.

Prior to the accident, Rogers worked as a labourer and enjoyed gardening, fishing and four-wheel driving. Following the accident, severe whiplash and degenerative changes in his neck and back, along with other injuries, incapacitated him. Although surgery has improved the intense shoulder pain, Rogers says, "My body has changed. It is better, but not perfect. But I get by."

Warnett took Rogers under his wing to ensure that he got the medical

care he needed. Through extensive evaluation and argument, Warnett was able to prove to ICBC that Rogers would experience a diminished quality of life and would not be able to go back to his job. "Ray, who is 53, worked for over 30 years, day in and day out, at the mill in Powell River," says Warnett. "The accident dramatically altered his life. He suffers from chronic pain. He enjoyed his job and the social contact with his co-workers. He has done the best he could to rebuild his life."

"I knew when I first met with ICBC that I wasn't going to get the compensation I needed. Without Paul's guidance, I wouldn't be where I am today."

Rogers is so appreciative of Warnett's efforts. "Paul has been a tremendous help on the legal



aspects," he says. "I knew when I first met with ICBC that I wasn't going to get the compensation I needed. Paul was instrumental in finding the right doctors for me. I didn't like going to rehabilitation; it was hard. Without Paul's guidance, I wouldn't be where I am today. I can't go back to my old job, but I try to help out when I can in my neighborhood and community. This settlement will allow me to live a better quality of life, to retirement and beyond."

ARRIVE ALIVE

By: Barbara K. Adamski

How Safe is Your Car?

We're often very concerned about vehicle safety when we make that initial purchase. But safety is an ongoing matter. For worry-free travels this summer, make sure you're correctly using your vehicle's safety features.

Seat belts are one of the most important safety features in a vehicle. In a collision, they can minimize the risk of whiplash; reduce the likelihood of you hitting the steering wheel, dashboard or windshield; and keep you from flying out of the vehicle in a more serious crash. Make sure your seatbelts fit properly, with the lap belt resting on the upper thigh and the shoulder

belt across the chest. And of course, remember to actually wear the seatbelt every time you travel by car.

Airbags are another popular safety feature. Frontal airbags inflate to prevent the driver and passenger from hitting the steering wheel, dashboard and windshield, while side airbags provide protection to the head and chest areas during side-impact crashes. Many advanced frontal airbag systems rely on sensors, which can automatically detect the seriousness of the collision, the size of the driver, whether or not a seatbelt is being used and more, to determine the appropriate level of force

with which to deploy the airbags.

Be aware, however, that airbag use requires a bit of caution. Airbags should be used in conjunction with seatbelts; drivers should keep at least 10 inches between their breastbone and the centre of the airbag cover; rear-facing child seats should never be placed in front of an airbag; and older children should sit in the back seat, buckled into a car or booster seat, depending on their height and weight and on local regulations (visit <http://bc.rcmp.ca/ViewPage.action?siteNodeId=445&languageId=1&contentId=5270> to read about BC's current legislation).

Stay safe this summer!

CAR ACCIDENTS POTENTIAL SOURCE OF CHRONIC PAIN

By: Andrea Potter

People injured in road traffic accidents have an 84 percent increased risk of developing widespread chronic pain, reports a study in the March 2011 issue of the *Journal of Arthritis Care & Research*.

The study of more than 2,000 people, published by Gareth Jones, PhD, of the University of Aberdeen School of Medicine and Dentistry in Scotland, looked at the onset of chronic pain following several types of traumatic events, including traffic accidents, workplace injury, surgery, fracture, hospitalization and childbirth. The study's findings suggest that more people experience chronic pain after a car accident than after any of the other five types of physically traumatic events.

One of the most common sources

of chronic pain following a car accident is whiplash. While most people recover from whiplash, the San Francisco Spine Institute's Patient Education Series reports that 15 to 20 percent of car-accident victims develop chronic pain. Although the majority of patients reach their individual maximum improvement within two years of the accident, 18 percent continue to have significant pain.

According to the Public Health Agency of Canada, motor vehicle accidents were the second highest cause of injury hospitalizations in Canada in 2005/06.

In an article in *ScienceDaily* (<http://www.sciencedaily.com/releases/2011/03/110321093649.htm>), Jones is reported saying that further



research should focus on the unique aspects of an auto accident and on the person's reaction to the particular trauma that causes the increased risk of the onset of chronic widespread pain.

TERRAFUGIA'S ROADABLE AIRCRAFT HITS THE HIGHWAYS AND THE SKYWAYS

By: Andrea Potter

Is it a car or a plane? Well . . . it's both! The Terrafugia Transition Roadable Aircraft is an airplane that can also be driven on streets and highways. The dream of many children to have a flying car is now a reality.

Recently, the company opened up their initial production facility in Woburn, Massachusetts. Two prototypes are currently being assembled and will be publicly unveiled this summer at the airshow in Oshkosh, Wisconsin. Production is scheduled for 2012, and the company has already received 100 orders.

The Transition has a flight range of 787 km at 172 km/hr. Once you land, the wings fold up in less than 30 seconds and off you go, driving, to your final destination — no need to rent a car or call a taxi. You can motor up to 105km/hr. The vehicle runs on high-grade unleaded fuel.



This remarkable invention is a two-seater, rear-wheel drive with automated electromechanical folding wings. It has full automotive crash safety features and comes with a full vehicle parachute.

Terrafugia is Latin for “escape from land.” Street-legal Transitions will be available in 2012.

For those in the market for a light sport aircraft (or a flying car!), this could be a dream come true. While the type of certification required to use the vehicle in Canada has not yet been determined, a person would likely need both flying lessons and flight time, a valid motor-vehicle licence, and additional insurance. The big hurdle to owning and operating a Transition, however, is bound to be the price tag — estimated at \$200,000 to \$250,000.

IN OUR COMMUNITY

Dermalive Class Action

Klein Lyons, in conjunction with Rosenberg & Rosenberg, is pursuing claims for Canadians who developed granulomas after using Dermalive, a cosmetic filler injected under the skin to smooth out wrinkles and other cosmetic defects. Many patients have suffered irreversible disfigurement from the injections. A certification hearing is set for July 19 & 20, 2011, at the BC Supreme Court courthouse in Vancouver. The Court will be asked to certify the lawsuit as a class action against the Canadian distributors of Dermalive.

\$133,000 Award for Motor-Vehicle Accident

In April 2011 Paul Warnett, trial lawyer at Klein Lyons, was successful in obtaining a sizable award for Beverly Perry, who was involved in two separate motor-vehicle accidents, occurring in 2007 and 2009. Perry suffered various physical injuries, chronic pain, reduced ability to perform her usual activities and diminished quality of life. Prior to the trial, ICBC offered to settle the claim for \$40,000. At trial, Warnett demonstrated that Perry's claim was deserving of an overall award of \$133,000.

Klein Lyons Partners with MADD Metro Vancouver

Klein Lyons has teamed up with MADD Metro Vancouver as a corporate partner and supporter to help keep roads safe. Klein Lyons is the official title sponsor for MADD Metro Vancouver Safety Fair, Project Red Ribbon and the Damaged Campaign, a multimedia presentation geared toward teens. We at Klein Lyons want to support the initiatives of MADD to save lives and improve road safety. For more information, visit the Klein Lyons community page: www.kleinlyons.com/community.

KLEIN LYONS IN SASKATCHEWAN COURT OF APPEAL *By: Doug Lennox*

Pain Pump Class Action Lawsuit

On April 1, 2011, lawyers David Klein and Doug Lennox of Klein Lyons appeared before the Saskatchewan Court of Appeal to make arguments in the pain pump class action. Lead plaintiffs Curtis Veinot and Sean Schroeder, from Saskatoon, who suffered debilitating injuries to their shoulders following surgery in which pain pumps were used, joined the lawyers in court. Several other members of this national class action were also present.

A pain pump, typically used in knee or shoulder surgery, is a portable device that pumps local anaesthetic into the surgical site following an operation. The device is alleged to cause chondrolysis, an irreversible condition in which the cartilage in the affected area dies. Without cartilage to protect the joint, the patient is left with chronic pain as bone grinds upon bone. Health Canada issued a warning in January 2009 concerning pain pumps and chondrolysis, but this warning came too late for Veinot,

Schroeder and others like them. They seek to hold the manufacturers of the pain pumps accountable, alleging that these products were not properly tested before being sold. (The pumps were sold under the brand name Donjoy and were distributed in Canada by the defendant, DJO Canada, Inc.)

Veinot and Schroeder's class action was certified by Mr. Justice Popescul in Saskatoon in March 2010. The defendant appealed this decision, but most of their appeal was dismissed outright in September 2010. One issue, however, did require further consideration: whether or not the *Consumer Protection Act* applies to the case, a matter that was argued before a three-judge panel in April of this year.

Explains Lennox, "The defendant argues that medical products are not consumer products and are therefore not covered by the *Act*. We strongly disagree. The *Act* is intended to protect people

from injury from unsafe products. A medical device like a pain pump presents a serious risk of injury if defective. It is exactly the kind of product that the *Act* is intended to cover. If the defendant's arguments are accepted, the effectiveness of the *Act* will be greatly reduced."

Regardless of the appeal's outcome, the lawsuit will continue. But the appeal raises an important issue of principle. As Lennox says, "The *Act* shifts the ordinary burden of proof of trial, placing the onus on manufacturers to show that their product is safe, rather than requiring the injured consumer to prove negligence. The *Act* helps consumers by placing the spotlight where it belongs, on whether or not the defendant took all reasonable steps to ensure the safety of their product. We hope that the Court of Appeal will reject the defendant's arguments."

The Court of Appeal's decision is expected shortly, after which the case will go to trial.

OUR FEE GUARANTEE:

Our fee will be a percentage of your settlement or court award. If we don't win, you pay no fee — that's our fee guarantee.



REFER A FRIEND 

Many of our new clients come from referrals of satisfied clients just like you. We appreciate your business and your referrals. If you know someone who needs our help, please give him or her our number for a confidential and free consultation.

604.874.7171



Vancouver
Suite 1100, 1333 West Broadway
Vancouver, BC V6H 4C1
Telephone 604-874-7171
Fax 604-874-7180

Toronto
Suite 1220-65 Queen Street West
Toronto, ON M5H 2M5
Telephone 416-506-1944
Fax 416-506-0601

www.kleinlyons.com
Email info@kleinlyons.com