

“Capped” Claims

As you may be aware, as of October 1, 2004, if you were involved in a motor vehicle collision in Alberta and you suffered a “minor injury” (a grade 1 or 2 whiplash to your neck, or a sprain or strain to a ligament/tendon, or muscle, typically your back), your claim for pain and suffering for that minor injury is capped at \$4000 (plus inflation). You can still fully claim for your other losses (such as vehicle damage, out of pocket expenses and lost income). Only your claim for pain and suffering is capped, and only for those injuries that fall within the definition of “minor”. It is possible to suffer a combination of both capped and non-capped injuries in the same collision.

A whiplash (neck) injury is NOT capped if it exhibits “*objective, demonstrable, definable and clinically relevant neurological signs*” or involves “*a fracture to or dislocation of the spine*”. If you are experiencing or have experienced, as a result of your motor vehicle accident, any of these signs or symptoms, it is crucial (both to ensure proper treatment and proper compensation) that you notify all of your MVA injury treatment providers of this so that they can confirm this at a later date. It could mean a significant difference in the amount of compensation you will receive.

The Minor Injury Regulations (MIR) also say that your injuries that may have started out minor are NOT capped if they nevertheless eventually cause you serious impairment, defined as “*a substantial inability to perform the essential tasks of your regular employment or education program, (despite reasonable efforts to accommodate), or normal activities of daily living, that has been ongoing since the MVA, and that are not expected to improve substantially*”. This deals with what you can do and what you cannot do at work, school and home, not merely whether you are in pain when you do it. Documenting such problems both personally (in a journal) and with your physician or health care provider is critical to ensuring that your injury claim is properly compensated. You will note that much of the above is of a medically-related nature, and therefore how well and thoroughly you inform your doctor of your problems is of vital importance.

NOTE: if you do not agree that the cap on minor injuries is fair, you are encouraged to contact the Premier of Alberta or your MLA and make your opinion known to them. You can find contact information for the Premier and your MLA in the phonebook, or online at www.alberta.ca.
