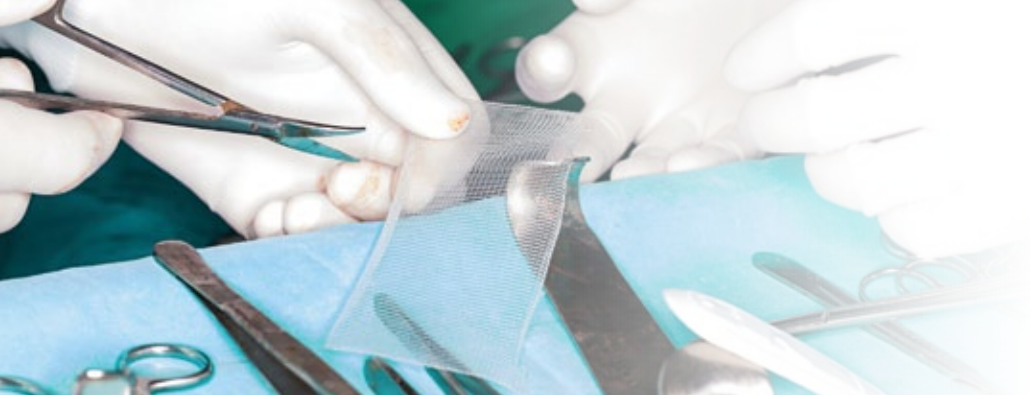

KLEIN • LYONS
Personal Injury & Class Action Law

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FULL DISCLOSURE

Fall | 2012

Women No Longer Silent About the Devastating Effects of Johnson & Johnson's Transvaginal Mesh Kits

Bev Stoughton is an active 60 year-old woman who lives life to the fullest and loves to teach water aerobics as well as hike, bike walk, and dance. Her active, healthy, pain-free life changed radically however, when she underwent what she thought was a simple surgery to correct a prolapsed bladder.

On June 1, 2010, Ms. Stoughton had Johnson & Johnson's transvaginal mesh kit (TVM) implanted to treat her bladder condition. Almost immediately after being implanted with the TVM kit, Bev started to experience a buring band of pain in her abdomen, groin and leg pain, in addition to mesh erosion. According to Bev, "It just didn't feel right. I knew there was something wrong.

Bev's TVM surgery was just the start of a long journey of pain, anguish, frustration and very diminished quality of life. The emotional turmoil accompanying her physical challenges now impact her daily activities as well as her relationships with others. "It is really tough to get on with my life. I would like to go back to work but it is difficult with all of the disruptions associated with the aftermath of this surgery. I feel like I'm in a holding pattern. I want to be pain-free and close this chapter of my life," says Bev. "I spend so much of my time and personal resources on research, travel to and from doctor appointments, surgeries and recovery time, and pain-control medication. On top of everything, all of this has created a financial burden."

In the course of her search for a solution, Bev was finally referred to Dr. Geoffrey Cundiff, Head of the Department of Obstetrics and Gynecology at the University of British Columbia. In June and August, 2012, Bev underwent two further surgeries to remove the mesh, which she describes as feeling like wire fencing inside the body. Her prognosis is still unclear, though, because she is still in daily pain. Now the next step is to complete a series of treatments with Marcy Dayan, a physiotherapist who specializes in pelvic organ prolapses. Hopefully, this will provide some pain relief from the muscle spasms and residual trauma from all the scar tissue.

Until recently, Bev thought she was alone with her problem and her pain, until she came across information on TVM while on holiday in the USA. It was then she learned that thousands of other women had also been affected by this product. According to the information, even though the FDA declared there were issues with the trans-vaginal mesh as far back as 2008, when a warning was issued about the serious complications associated with their product, Johnston & Johnston continued to promote the TVM, with overstated benefits and understated risks.

The discovery of the new information was a catalyst for Bev to file a class-action lawsuit in British Columbia. "This is just wrong," states Bev. "The governing bodies need to provide clear information regarding the risks and side effects for women who are considering a mesh product. Testing and trial periods need to be carried out and communication of the results needs to be transparent."

Bev's recommendation today to all women considering any type of mesh surgery: "I encourage you to conduct due diligence and thorough research. There are a lot of mesh products and procedures on the market and some are very safe, but there are others that carry serious, life-long complications." She speaks from personal experience.

By: Andrea Potter

In the Community

This fall Klein Lyons is involved in several initiatives with local organizations to help advocate and educate for road safety.

Madd Metro Vancouver: Klein Lyons is a sponsor of: The annual Red Ribbon Campaign; and the Multi-Media Presentation "Long Weekend", that is presented to various lower mainland high schools.

madd Metro Vancouver

Drop It And Drive: Join us at Point Grey Secondary School on November 21, 2012 for National Day of Remembrance for Road Crash Victims. We will be collecting coats for those in need this winter. If you have any donations please drop them off at Klein Lyons before November 21.

DROP IT AND DRIVE! DropItAndDrive.com

Vancouver Giants: Third annual sponsorship and on-ice events.

Dress for Success: Klein Lyons continually supports the various programs for women entering or returning to the work force. Join us to support the cause. Enter to win a Ipad 3 valued at over $700. Ask us how!

Visit www.kleinlyons.com or facebook.com/kleinlyons for info on events. Join us in our support to keep our communities safe.

Dangers of Loaning Your Car

Helping a friend to move, get Spot to the dog beach or haul a futon from Ikea might seem like a kind thing to do. But before giving them your car keys, read our primer on ICBC's insurance liability.

The Motor Vehicle Act (s. 86) states that you, as owner of a vehicle, are legally responsible for any injury or damage it causes, even if you are not the one behind the wheel.

Three key considerations of note are:

1. Owner liability
2. Effect on insurance premiums
3. Personal risk if you are held in breach of your insurance contract.

If your loaner results in mishap, three things will happen:

1. Your friendship or familial ties will be sorely tested because you're liable for someone else's actions.
2. Your phone will begin to ring incessantly. That's the insurance company calling to respond to the claim.
3. ICBC calculates how much your premiums will change and how your 'safe driving discount' will be affected. Their 'Claims Related Scale' (CRS) is based on the premise that experienced, safe drivers deserve a discount. In a nutshell, all drivers begin with a CRS level of zero or the base rate and drivers move up or down this scale. For each year without claims, the driver will move down (to -1, for example) and receive a 5% discount. For each 'at fault' claim, the driver will move up the scale and pay a higher premium.

Based on the CRS, a maximum ICBC discount (attainable after nine years of safe driving), can be as high as 43%. Conversely, surcharges added to the premiums of drivers who cause many accidents, can be as high as 75%.

The third potential consequence resulting from loaning your car, happens in unfortunate situations such as drunk driving, criminal activity, or breaches against your insurance. Breaches result when a driver has a restricted or expired license, when you don't disclose names of others who regularly drive your vehicle, and more. In such a 'worst case scenario', it's possible that you could be held personally liable. ICBC will file legal action against you. Worse yet, your 'third party liability' is nullified because when you are in breach, you are not covered. Loaning your car to someone who has an at fault accident, could potentially be very expensive financially for the insured person.

Mark Lyons recommends " be very cautious about loaning out your car. As the statutory owner, the lender is liable against any action against that policy. Ensure you know the person and what they are going to do with the car."

That's a lot of risk for playing nice-guy with your vehicle. Be very wary of loaning your vehicle out; know the risks and ensure that you have all the information you need. When in doubt, don't hesitate to call ICBC or your own insurance broker.

By Nancy Baye

Taking Care of Your Finances – Before & After an Accident

We never expect it, but a car accident can happen at any time and life can change in an instant. In addition to dealing with the emotional and physical impacts of an accident, the financial shocks can also be hard-hitting. But there are important steps you can take – both before and after an accident—to help soften the blow.

Before an Accident:

Ensuring You Have a Basic Safety Net:

When he developed the Boy Scout motto, "Be prepared," Lord Baden-Powell, founder of the Scout movement, wasn't referring to being prepared for an emergency. Rather, his idea was that all Scouts should prepare themselves, in mind and body, for any potential struggles they might encounter, and be ready to meet, with a strong heart, whatever unexpected challenges might lie ahead. This message – to be well-prepared for the unexpected – is one worth heeding for all of us. And it includes ensuring we have a basic financial safety net in place should we find ourselves unable to work and earn an income due to a car accident or other type of injury. Here are a few key steps you can take to ensure you're financially prepared, before and after an accident:

Emergency Fund: Most financial experts recommend having at least three to six months' living expenses set aside for the unexpected. Pay into this fund each month to build up and maintain your contingency fund. The website Investopedia offers some great tips, the first of which is to determine your typical monthly expenses so that you know how much to set aside. According to Statistics Canada, the average household's monthly expenditures are $4,418.00 (2010). Treat your emergency fund like any other fixed monthly expense, and 'pay yourself first' by paying into it each and every month. Start small and work your way towards your larger goal. The easiest way to build your emergency fund is to set up an automatic transfer between your chequing and savings accounts.

Disability Insurance: Check with your employer regarding your options for both short- and long-term disability insurance. If you're self-employed, consult with your financial advisor or do your own research. Some professional and business associations also offer group plans.

Extended Health Benefits: Do you or your spouse have an extended benefits plan? Carefully read your plan handbook, and be aware of your coverage and plan conditions. Ask your company human resources manager or your financial advisor to help you understand your coverage. As with disability insurance, if you're self-employed, explore alternative extended health benefits options that might be available to you.

After an Accident:

Contact a lawyer: If you've had a car accident and can't work, it's best to invest a few moments in talking with a lawyer who specializes in motor-vehicle accident claims. These legal professionals will be able to advise you on how to work with ICBC, as well as what medical or Part 7 benefits you may be eligible for. Car accident lawyers have expert knowledge of and established relationships with ICBC, so they can effectively negotiate on your behalf for both short-term and long-term compensation. For example, even things like housekeeping expenses may be covered by your ICBC insurance if you are not able to care for your home.

Contact a financial advisor: Now is the time to start implementing a 'smart living' plan. Reduce any discretionary expenses. Determine what savings you have access to as well as how you can tap into any other financial resources you may have.

Talk to your banker: If you have a mortgage in good standing, you may be eligible for a short deferral on payments. Do you have any cashable investments? Would it make sense to cash in on any RRSPs if you are off work for an extended time?

These are just some examples of key steps you can take to protect yourself financially. A recent survey by the Canadian Payroll Association found that 47 per cent of respondents said they would be in financial dire straits if their pay was delayed by as little as a week. Don't be one of the majority of Canadians living paycheque to paycheque. Instead, be like Baden-Powell and be prepared. Set yourself up today, so that if the unexpected happens, you're not adding to an already difficult, painful experience by shouldering yourself with unmanageable financial burden.

By: Michele Pankratz

Technology Could Soon Be Easing Our Traffic Jams

According to the automotive navigation system TomTom's Congestion Index, Vancouver holds the dubious title of Canada's most traffic-congested city.

Aside from the aggravation and resultant stress caused by traffic jams, gridlock also contributes to higher fuel consumption and emissions and greater risk of rear-end accidents. So any technology that might relieve our traffic jams is a welcome prospect. In fact, new technological developments that are promising to relieve pressure in our cities' bottlenecks are now in the works. **Here are some examples:**

- Honda recently announced the world's first traffic- jam prevention technology. Recognizing that driver acceleration and deceleration behaviour influences the traffic pattern of trailing vehicles and can trigger congestion," Honda has created a system that immediately senses these stop-and-go tendencies of drivers in front of us, sending alerts to facilitate smoother driving patterns. Testing suggests the system can increase average driver speeds by 23 percent and improve fuel efficiency by 8 percent. Public road-testing of the system is slated for 2012 in Europe and Asia.
- Ford's Traffic Jam Assist, adopting some of the company's existing parallel parking technology, allows its vehicle to automatically follow the vehicle directly ahead in a traffic jam and informs the driver of changing traffic situations ahead. Foreseeable benefits include reduced driver fatigue and stress as well as improved vehicle flow.
- The driverless-car concept, currently being tested by BMW and Google, utilizes technology that senses where a vehicle stands in relation to others,with vast potential for relieving the human-stress toll of traffic jams.

While the new traffic-jam prevention features may not be available to all of us, the good news is that we'll all likely benefit from their presence. Current studies suggest that only five "talking" cars in 1,000 could eliminate gridlock.

Avoid traffic congestion–and improve your quality of life–by making the most of traffic-jam prevention technologies available to you.

Traffic technology you can use today to dodge congestion! *A quick check on your computer will yield helpful traffic updates:*

- Google Maps recently added a traffic button (right side of the screen), that advises you of your anticipated drive time according to your destination and current conditions
- AM730.ca, the all-traffic website, includes an up-to-the-minute traffic Twitter feed, as well as live radio updates
- The CTV Morning Live Traffic App for mobile devices is set for hands-free use so you can literally 'listen your way out' of traffic trouble-spots (for safety, please do not use hand-held visual devices while driving. Lock the device in your glove box or trunk to prevent the temptation of using it on the road).

By: Lam Tang

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."

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David Klein has been selected by his peers for inclusion in the seventh edition of Best Lawyers in Canada in the practice area of Class Action Litigation.

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