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Personal Injury & Class Action Law

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FULL DISCLOSURE

Summer | 2013

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Pfizer Inc. Appeal Up In Smoke in Champix Class Action

By: Andrea Potter

Pfizer Inc. has lost its appeal in the Ontario Superior Court of Justice to dismiss the class-action lawsuit against Champix, the smoking cessation drug. Klein Lyons filed a class action lawsuit against Pfizer in 2010. "The lawsuit is essentially a failure to warn case," says David Klein. "There are questions about the efficacy of the drug as balanced against the harm. Our clients feel the drug is too dangerous to be on the market."

The appeal announcement comes as good news to Simon Dunn, as well as many others who suffered serious side effects as a result of taking Champix to eliminate smoking addictions.

Sales of Champix began in Canada in April 2007. By September 30, 2009, Health Canada had received 1,178 reports of adverse reactions to the drug. The Champix class-action lawsuit alleges that Pfizer Inc. had a duty to warn Canadians of the serious side effects that can occur when taking the drug.

The nightmare began for Dunn, a healthy post-secondary teacher, in November 2007, when he decided it was time, once and for all, to kick his 10-to-12 cigarettes a day habit. A primary motivator for Dunn was his desire to set a good example for his baby daughter and to be comfortable handling her. After consultation with a family doctor, Dunn decided to use

"The appeal announcement comes as good news to for those who suffered serious side effects as a result of taking Champix to eliminate smoking addictions."

what was being touted as a "miracle cure" for smokers, the drug Champix. Having previously tried Zyban, another smoking-cessation drug, and experiencing side effects from that one, Simon was cautious but decided that the possible side-effects of strange dreams and some minor gastrointestinal upset would be worth the risk.

It wasn't long after starting on Champix that the strange dreams started to kick in for Dunn, which he reported to his doctor. It was recommended to Dunn that he keep an eye on his symptoms and report back if his weird dreams became worse. Within three months, Dunn's side effects went from experiencing some violent dreams to instigating violence and attempting suicide. On January 24, 2008, Dunn had a complete psychotic breakdown, resulting in an assault on his wife and aunt and property damage to his home. Although Dunn has no recollection of the episode, his wife described his bizarre behavior as an attempt to fight unknown forces trying to harm his then-two-year-old daughter.

Dunn woke up in the hospital the day after his breakdown to find out that he had been arrested, had tried to commit suicide, and was charged with two counts of assault. His nightmares had become reality.

Although the charges against him were dropped, Dunn had a restraining order and no-contact order from his family placed against him for 36 days.

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The Klein Lyons Full Exposure Driving Blog is jammed with great ideas, safety tips, car accident legal resources and community information. Sign up today to get your weekly blog delivered to your inbox. http://kleinlyons.com/blog/

D.I.A.D. DropItAndDrive.com (www.dropitanddrive.com)

madd Metro Vancouver (www.madd.ca/vancouver/)

Klein Lyons is pleased to announce our renewed commitments in 2013 to Mothers Against Drunk Driving Metro Vancouver and Drop It And Drive

"The goal of Drop It And Drive is to reduce injuries and save lives through our youth and corporate education programs to eliminate distracted driving. We have reached some 20,000 youth and experienced drivers across Canada. It is with the support and involvement of our sponsors, like Klein Lyons, that we are able to commit to continuing until we've reached every Canadian. Our no-fee elementary and high school program wouldn't be sustainable without financial and resource support from the amazing team at Klein Lyons. As a personal injury law firm, they have a insiders' perspective on the catastrophic and often tragic consequences of distracted driving; we're pleased to collaborate with them in a preventative context."
Karen Bowman, Founder DIAD

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Pfizer Inc. Appeal Up In Smoke in Champix Class Action

He was also ordered to take a psychological test and attend anger-management courses and addiction counselling. "I went from being an upstanding citizen to a criminal overnight," says Dunn. "You have no idea what that does to a person's life."

"Prior to taking Champix, I had never been suicidal, but it became a frequent thought until just recently. To be suffering that much for that long, somebody needs to apologize," states Dunn. "For Pfizer to have used me as a guinea pig is disgusting. I was so relieved to find that a Champix class action was in progress and to know that others had experienced the same things. It gave me comfort to know that there was a reason behind my Jekyll-and-Hyde behavior that was not part of my character or history. There was so much trauma – for my wife, my daughter, and myself – from the violent side-effects of taking Champix. We are still working through all the fallout."

www.kleinlyons.com/class/champix/index.html

Biking The Right Way

When Mayor Robertson declared that Vancouver was going to be the greenest city in the world by 2040, transportation was the first to see some serious changes. Many griped when he traded precious laneways for bike lanes, but this initiative has ignited a serious urban biking culture as more and more Vancouverites are losing their car keys and hitting the streets on two wheels.

Besides the environmental benefits, bikes are convenient, affordable, and a great way to squeeze in exercise into your daily routine. The summer months are a perfect time to explore Vancouver's beauty. From Jericho Beach to English Bay, take the scenic route and tour the best of Vancouver's neighbourhoods. The city has an extensive network of designated bike routes to help you get around.

But biking doesn't come without danger. In Canada, 56% of cyclist fatalities and 85% of serious injuries occur in cities. So before you hit the pavement, make sure you're following these safety measures:

- Always come to a full stop at stop signs. Not stopping is illegal under the BC Motor Vehicle Act and comes with an $167 fine.
- You need to communicate with cars, pedestrians, and other bikers. Do you know the hand signals?
- Yield to pedestrians crossing the street and to buses when they are leaving a bus stop.
- Do not ride on sidewalks or crosswalks.
- Get equipped: front and rear lights on your bicycle are required by law.
- Helmets must be worn according to provincial law.
- Wear safety vests and reflective clothing, especially when pedaling at night and in the rain.
- We know you love your music, but when you're biking, lose the ear phones!
- Take extra care when it's wet because it will take longer for your brakes to grip.

CREATING A NEW LIFE BLUEPRINT

When a motor-vehicle accident and permanent injuries turn your life upside-down (part two of a three-part series).

By: Michèle Pankratz

> *"When we are ready to make a new beginning, we will shortly find an opportunity."*
> *William Bridges, Transition Expert*

In our previous article in this series (www.kleinlyons.com/news/13-mar/index.html#transition), we discussed the transition you undergo when you've suffered the trauma of a motor vehicle accident and permanent injury. That transition includes experiencing the 'ending' of life as you knew it, moving through the foggy uncertainty and unknowns of the 'neutral zone' as you're forced to let go of one life chapter but haven't yet emerged into your new one, and ultimately the birth of a 'new beginning' and living life with your injury.

> *"You'll increase your chances of thriving by purposefully mapping out your new life needs and possibilities."*
> *Michele Pankratz*

To increase your chances of living optimally in your new reality, one recommended step is to intentionally reflect on what you need and want your 'new normal' to look – *and feel* – like and to sketch a 'blueprint' for that new life. While it can feel daunting or even impossible to think about the future while you're still reeling from the shock and impacts of your accident, you'll enhance your chances of thriving in your new circumstances when you take active steps to envision and even just roughly map out your new life needs and wants. In fact, the very act of reflecting will in and of itself, help you start to gain a sense of greater control and choice, which are both important contributors to your well-being.

As you're engaged in your injury recovery process, you'll begin to get a clearer and clearer sense of your new physical, mental, and emotional capacities. With that in mind, one very simple activity you can engage in is to set aside some quiet alone time for yourself and complete the following exercise:

- Divide a piece of paper into two columns.
- In the first column, list all the key areas of your life–family, health, key relationships, work, finances, recreation, spiritual practices, home, etc.
- In the second column, envision and make note of what you need and more importantly, want life to look and feel like going forward.

Here are some examples of things to consider: do you have children and now need help with care taking, meal-making, and transporting to and from school and activities? Do you need to take an extended leave of absence from work or will you need to consider new work options altogether? How much money do you need and want to live sustainably? Do you have new expenses to factor in? Which relationships do you need and want to maintain? Are there some you'll need to let go of or new ones you'll want to create? Are you feeling exhausted, weak, depressed or alone and want to feel more vibrant?

For some of us, engaging in a life design exercise is enhanced when we invite the perspectives of others. You might want to 'noodle over' your ideas and options with your spouse, a close friend, your rehabilitation team and even a life coach.

Ultimately, the key point of outlining your new life needs and wants and getting them down on paper is to provide you with a sense of both clarity and hope. Your blueprint will begin to serve as a compass, helping guide your day-to-day decisions and actions. It will help you begin to see new options and opportunities. And step by step, you'll find yourself building and one day moved into your new life!

Read Part 3 in the Klein Lyons Enews – Fall 2013.

ABOUT THE AUTHOR

Michèle [www.linkedin.com/in/miche-lepankratz] provides transition and 'life re-design' coaching, support, and resources to individuals who have experienced a significant life change and are seeking to create a new, inspired, empowered life reflecting their new realities.

For more information:

Bridges, William. *Transitions: Making Sense of Life's Changes–Strategies for Coping with the Difficult, Painful, and Confusing Times of Your Life*, 25th Anniversary Edition: 2004

When a Minor is in a Motor Vehicle Accident

Unfortunately, minors (those under age 19) are often involved in motor vehicle accidents and may suffer serious injuries, some effects of which may not become apparent until years after an accident. If you are a minor who was been injured in an accident, or are the parent or guardian of an injured child, you will likely be wondering what to do, where to turn, and whom to talk to. Here are a few answers.

> *"Under British Columbia law, persons under 19 years of age... are considered "persons under disability".*

The Litigation Guardian

Under British Columbia law, persons under 19 years of age (legally termed infants) are considered "persons under disability". In order to pursue a claim for personal injury damages, an infant needs to be represented by a *guardian ad litem* (litigation guardian), who is a competent adult, often a parent or other close relative. The litigation guardian takes all steps and makes all decisions on the infant's behalf. Unlike an adult litigant, a litigation guardian must act by a lawyer (cannot act unrepresented). Once a litigant reaches 19 years of age, he or she no longer requires a litigation guardian and can make his or her own decisions in litigation.

The *Limitation* Act

In British Columbia, most limitation periods for starting a lawsuit are contained in the Limitation Act. For most personal injury claims, an action must be started within two years of the date of injury. However, for an infant, that two year limitation period generally does not start to run until the infant plaintiff reaches age 19.

The Public Guardian & Trustee

In British Columbia, the office of the Public Guardian & Trustee (PGT) serves infants (those under the age of 19) by protecting their legal and financial interests. Part of the PGT's mandate is to review any proposed settlement of an infant's claim by the litigation guardian, to ensure that the proposed settlement fairly compensates the infant plaintiff. For a settlement of $50,000 or less, the PGT can approve or reject the proposed settlement. For a settlement over $50,000, the PGT makes a recommendation to the court as to whether the proposed settlement is adequate, following which the court makes the ultimate decision as to whether the settlement is fair. Once the settlement is approved, the infant's settlement funds are held in trust by the PGT and invested on the minor's behalf until he or she turns 19.

Important Actions in a Minor's Motor Vehicle Accident Claim:

- Seek immediate medical attention following the accident.
- Retain a lawyer.
- In consultation with the lawyer, ensure that a suitable litigation guardian is appointed.
- Make sure the child attends for regular assessment and treatment with his or her family doctor and undergoes recommended treatments, whether physical, psychological or both.

By knowing in advance – before you take any legal action – the special considerations involved when a minor has been injured in a motor vehicle accident, you can take the right steps to ensure that the best interests of that minor are protected.

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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