
Cleaning Up: Claiming Housekeeping Inefficiency

What you need to know about
McIntyre v. Docherty

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B&A

Background of *McIntyre v. Docherty*

- MVA: April 23, 2000
- Injuries:
 - Chronic pain
 - Fibromyalgia
 - Depression
 - Anxiety
- Could perform most housekeeping with pain
- Remainder of housekeeping performed by family members

Jury Award

- For housekeeping claim, jury awarded:
 - \$5,000 for past housekeeping insufficiency damages;
 - \$10,400 for past loss of housekeeping capacity; and,
 - \$44,535 for loss of future housekeeping capacity
- \$92,500 non-pecuniary general damages

Basis of Defendant Appeal

- Housekeeping insufficiency is not a separate head of damage;
- Should be included as part of non-pecuniary damages for pain and suffering
- No incurred expenses, therefore no entitlement to past and future loss of housekeeping capacity

Court of Appeal

- Trial judge's award upheld.

Impact

- What guidance does *McIntyre* offer for other housekeeping claims?
 - sets out factors relevant in establishing claims for housekeeping;
 - sets out three instances of loss of housekeeping capacity;
 - guidance regarding quantification

Establishing Housekeeping Claims

- Relevant factors:
 - pain and suffering when performing housekeeping tasks;
 - previous high housekeeping standards;
 - impact of injuries on standards;
 - inability to do tasks previously enjoyed; and
 - impact on relationships with others

Types of Housekeeping Losses

- Work left undone;
- Work done with increased pain and decreased efficiency;
- Work done by Third Parties

Work Left Undone

- Unable to perform housekeeping; and
- Third party does not complete housekeeping tasks
- Where work is undone, two compensable non-pecuniary losses
 - personal loss to plaintiff: housekeeping contributes to person's self-worth and identity;
 - loss of amenity: forced to live with loss of amenity of orderly and functioning home

Work Done with Difficulty

- Continues to perform housekeeping activities, but experiences pain or difficulty
- “Inefficiency” occurs when:
 - *“He or she is required to work more hours post-accident to accomplish the same amount of pre-accident housekeeping. If a plaintiff thus works “inefficiently” her or his non-pecuniary award would be increased to reflect any increased pain and suffering. To the extent the plaintiff’s inefficiency also results in a less clean and organized household, this is a loss of an amenity that the award for non-pecuniary damages would also take into account.”*
- Court considers:
 - evidence of pre-accident and pre-trial housekeeping, increased pain and suffering, decreased housekeeping, impact of reduction in standard of housekeeping on plaintiff.

Work Done by Third Parties

- Incurs out-of-pocket expenses by hiring housekeeper:
 - may claim replacement costs

Calculating Housekeeping Claims

- Three main points:
 - where pecuniary and non-pecuniary award made, **no need to separate or itemize sub-categories for different components under global award for non-pecuniary damages**
 - award for **housekeeping inefficiency damages should not be deducted from award for past loss of housekeeping**
 - **not required to incur out of pocket expenses for housekeepers to be successful in claiming award of housekeeping**

Proving Housekeeping Claims

- Quantification of economic loss requires assistance of experts
- Economist should be retained to prepare report and give evidence regarding housekeeping claims

Conclusion

- Both non-pecuniary and pecuniary awards possible in housekeeping claims
 - Non-pecuniary:
 - work left undone
 - work done with difficulty
 - Pecuniary:
 - replacement value of work done by third party
- Two types of non-pecuniary losses:
 - loss of identity associated with work performed
 - loss of amenity of orderly and functioning home