

THE BILL 198 THRESHOLD – OVERVIEW AND UPDATE

What is the Bill 198 Threshold?

In Ontario, the framework for the recovery of non-pecuniary or general damages by a person injured in a motor vehicle accident is established by section 275.5(5) of the *Insurance Act*. Pursuant to section 275.5(5), a plaintiff is not entitled to an award of non-pecuniary or general damages unless he or she has sustained injuries that have resulted in “a permanent, serious disfigurement” or “a permanent serious impairment of an important physical, mental or psychological function”. This is commonly known as the statutory threshold or the threshold test. Unlike its predecessor legislation, Bill 59, the current regime under Bill 198 provides guidance to the interpretation of section 275.5(5) by expressly defining its key terms by way of Regulation 381/03.

Yet despite the fact that the terms “serious”,¹ “important”² and “permanent”³

¹ 4.2 (1) 1. “**Serious**” – the impairment must,

i. substantially interfere with the person’s ability to continue his or her regular or usual employment, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue employment,

ii. substantially interfere with the person’s ability to continue training for a career in a field in which the person was being trained before the incident, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue his or her career training, or

iii. substantially interfere with most of the usual activities of daily living, considering the person’s age.

² 4.2 (1) 2. “**Important**” – the function must,

i. be necessary to perform the activities that are essential tasks of the person’s regular or usual employment, taking into account

are all defined by Regulation 381/03, the application of these terms to specific fact situations has remained the subject of frequent legal debate. While each case will undoubtedly turn on its own facts, the key to the analysis on a threshold motion is the plaintiff’s ability to establish that his or her injuries have resulted in a “substantial interference” with employment and daily life. As our review of the recent case law illustrates, a shift away from the broader approach under the predecessor legislation has made it more difficult for the plaintiff to discharge this onus.

A More Restrictive Approach

Early interpretations of Bill 198 saw two different schools of thought emerge regarding the impact of the defined terms in Regulation 381/03. The first, as

reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue employment,

ii. be necessary to perform the activities that are essential tasks of the person’s training for a career in a field in which the person was being trained before the incident, taking into account reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue his or her career training,

iii. be necessary for the person to provide for his or her own care or well-being, or

iv. be important to the usual activities of daily living, considering the person’s age.

³ 4.2 (1) 3. “**Permanent**” – the impairment must,

i. have been continuous since the incident and must, based on medical evidence and subject to the person reasonably participating in the recommended treatment of the impairment, be expected not to substantially improve,

ii. continue to [be serious], and

iii. be of a nature that is expected to continue without substantial improvement when sustained by persons in similar circumstances.

articulated by Justice Morissette's decision in *Nissan v. McNamee*,⁴ was the view that Regulation 381/03 did not represent a significant departure from its predecessor regime under Bill 59. The second, as represented by Madam Justice Milanezzi's reasoning in *Sherman v. Guckelsberger*⁵ took the opposite view, namely, that the provisions of Bill 198 were intended to effect change by "tighten[ing] up" the threshold requirements of section 267.5 of the *Insurance Act*. According to this latter interpretation, the purpose of the Bill 198 amendments was to limit recovery for pain and suffering to seriously injured individuals, and thereby reduce insurance premiums paid by the Ontario motorists.

In his 2009 decision in *Sabourin v. Dominion of Canada General Insurance Company*,⁶ Justice Valin sided with Justice Milanezzi's approach, when he concluded that the legislature's intention in enacting Bill 198 had been "to tighten up the threshold by reducing the number of litigants able to sue".⁷ He made it clear that pain alone will not be sufficient to satisfy the threshold requirements. In granting the defendant's threshold motion, Justice Valin stated:

The plaintiff must do more than simply experience pain in order to bring herself within the exception to the threshold wording. The onus is on her to prove on a balance of probabilities that the pain she is experiencing has substantially interfered with most of her activities of daily living. ... By any definition of the word "most", she has failed to prove on balance that the pain from which she suffers has substantially interfered with most of her activities of daily living. Her claim for non-

pecuniary damages is therefore dismissed.⁸ [Emphasis Added]

Undoubtedly, all threshold cases will be heavily fact and evidence driven. That said, a review of the recent decisions in this area indicates a discernible move on the part of the judiciary towards a more restrictive approach to the interpretation of the threshold requirements under Bill 198.

Iannarella v. Corbett, 2012 (Moore, J.)

Justice Moore's decision in *Iannarella v. Corbett*⁹ is one recent example of the courts' move towards a stricter interpretation of the threshold. It confirms that even in case of an accident found to have caused an injury requiring significant treatment, including surgeries, the ensuing loss of function must still be of sufficient severity and permanence so as to meet the relevant statutory definitions.

In *Iannarella*, the plaintiff claimed to have suffered from left shoulder pain, restricted mobility of his left arm and shoulder, and chronic pain syndrome attributable to the accident. At the time of the accident, the plaintiff, 53, was employed with a car parts manufacturer as a supervisor and fork-lift operator. He sought general damages for pain and suffering as well as damages for loss of income and future care costs. On the defendant's threshold motion, Justice Moore:

- a) accepted that the plaintiff sustained a rotator cuff injury, requiring two surgeries;
- b) accepted that the injury and surgeries resulted from the accident;
- c) found that the plaintiff suffered from "a pre-existing but asymptomatic degenerative condition of the left shoulder", which was aggravated by the accident;

⁴ *Nissan v. McNamee*, [2008] O.J. No. 1738 (SCJ)

⁵ *Sherman v. Guckelsberger*, [2008] O.J. No. 5322 (SCJ)

⁶ *Sabourin v. Dominion of Canada General Insurance Company*, [2009] O.J. No. 1425 (SCJ)

⁷ *Sabourin*, supra at para 83

⁸ *Sabourin*, supra, at para 99

⁹ *Iannarella v. Corbett*, [2012] O.J. No. 1863 (SCJ)

- d) concluded that the plaintiff was misdiagnosed with chronic pain, as the diagnosis was based solely on information provided by the plaintiff;
- e) held that, even if the chronic pain diagnosis were accepted, a variety of treatment alternatives existed and the evidence fell short of establishing a serious permanent impairment;
- f) found that, although he was employed at the time of the accident, the plaintiff would have been laid off less than a year following the accident as his employer moved the company's manufacturing operations out of the country;
- g) found that it was unlikely that the plaintiff would have continued to work until the age of 65, regardless of the motor vehicle accident; and
- h) concluded that, despite the fact that the plaintiff's shoulder injury was aggravated by the accident, it was unlikely to be the cause of his inability to work.

The trial proceeded 4 years after the accident, but just 7½ months following the plaintiff's second shoulder surgery. The treating physicians deemed this surgery a success, and testified that the plaintiff may experience improvements for up to two years following surgery. As such, Justice Moore determined that the plaintiff's post-surgical recovery remained in progress, and that his condition was likely to continue to improve.

Justice Moore also found that the plaintiff was not a credible witness. He provided inconsistent, contradictory testimony and tended to overstate his limitations while understating his abilities. In addition, the surveillance contradicted the plaintiff's self-description of his pain experience and abilities, and put into question his own and his family members' credibility.

Notably, Justice Moore also found that the plaintiff failed to meet the criteria in

section 4.3(5) of Regulation 381/03, which required him to adduce evidence corroborating the change in function that is alleged to be a permanent serious impairment. Here, the evidence of the plaintiff's family members did not address the change in function with appropriate specificity, nor did it explain when any such change had occurred.

In the result, having regard to the aforementioned factors, and in particular, the findings: (1) that the plaintiff and his family members lacked credibility; (2) that the injury did not negatively impact the plaintiff's employment; (3) that the case was rushed to trial before the plaintiff experienced maximum medical recovery, Justice Moore concluded that the plaintiff failed to establish a permanent serious impairment of an important physical or psychological function within the meaning of Regulation 381/03. Accordingly, the threshold was not met.

Other Recent Decisions Where The Threshold Was Not Met (Selected Cases)

1. *Smith v. DeClute*, [2012], O.J. No. 2644 (SCJ), Wilson, J.

Injury: The plaintiff, 25, claimed to have sustained a fractured rib and strains to his neck and back. At trial, he claimed that he continued to experience low back pain.

Impact on Employment: The plaintiff claimed that he was unable to return to his job as a cook for 3 years post-accident. He returned to work full time 5 years after the accident without modifications. He testified that he planned to continue working in this capacity in the future.

Impact on Activities and Daily Living: The plaintiff's family members testified that he was unable to participate in activities he engaged in prior to the accident, including sports, camping and assisting with household duties.

Justice Wilson's Key Findings:

- **Pre-existing issues:** The plaintiff had a significant drug and substance abuse problem which pre-dated the accident, continued post-accident, and was not disclosed to his treating physician.
- **Credibility:** The plaintiff's evidence was neither credible nor consistent. He gave inaccurate or incomplete information to doctors, particularly with respect to his substance abuse problems. The plaintiff's self-reports of pain and post-accident limitations were held to be unreliable, as were the plaintiff's and his family's accounts of his activities prior to the accident. The plaintiff's reasons for failing to continue with several different employment opportunities were contradicted by the evidence of his prior employers.
- **Surveillance:** Surveillance contradicted the plaintiff's evidence of disability, as well as undermined the history provided by the plaintiff to his doctors.
- **Treatment:** The plaintiff did not follow the recommendations of his treatment providers and had virtually no treatment in the four years preceding the trial.

Based on the foregoing factors, Justice Wilson held that: "there is [nothing] of an orthopaedic nature that accounts for the Plaintiff's described pain, nor ... anything of a psychiatric diagnosis that would assist the Plaintiff in establishing that he has suffered a permanent impairment of a psychological function".¹⁰ Accordingly, the requisite threshold had not been met in this case.

2. *Dahrouj v. Aduvala*, [2012] O.J. No. 3218 (SCJ), Hackland, J.

Injury: The plaintiff, 48, alleged that she developed chronic pain syndrome, with symptoms that included: diffuse neck pain, diffuse pain in her left shoulder radiating down her left arm, diffuse pain in her lower back, diffuse pain radiating down her right leg and knee, headaches, difficulties with sleep, fatigue, depression and anxiety.

Impact on Employment: The plaintiff was a homemaker on social assistance. She claimed that chronic pain significantly limited her housekeeping abilities, requiring her to retain others to do the work she normally did herself.

Impact on Daily Activities: The plaintiff claimed that her chronic pain restricted her ability to interact with her family and her mosque.

Justice Hackland's Key Findings:

- **Accident:** The accident was "a relatively minor rear end collision", which resulted in minor damage to the vehicles.
- **Pre-existing conditions:** In the year leading up to the accident, the plaintiff made frequent complaints of head, neck and back pain not unlike her post-accident complaints.
- **Credibility:** The plaintiff lacked credibility. Her self-reporting of her limitations was contradicted by both the medical and the surveillance evidence.
- **Surveillance:** Surveillance was particularly devastating to the plaintiff's credibility: it showed her to be capable of vigorous and sustained activities, including those she claimed she was unable to do.
- **Treatment:** The plaintiff did not: (1) receive any assessment of her functioning outside of her medical legal attendances; (2) participate in any "pain clinic"; or (3) receive any psychiatric assessment or intervention.

¹⁰ *Smith v. DeClute*, [2012] O.J. No. 2644 (SCJ) at para 28

- **Experts:** Justice Hackland described the plaintiff's orthopedic expert as "somewhat impressionistic". The expert's uncritical reliance on the plaintiff's self-reported data (the credibility of which he did not question), affected the weight afforded to his opinion.

In consideration of these findings, Justice Hackland held that the plaintiff failed to meet the threshold. Significantly, he also noted the jury's verdict denying the plaintiff any recovery for future loss of housekeeping services was "one supporting factor" taken by the court into account in concluding that the threshold had not been met in this case.¹¹

3. *Jennings v. Latendresse*, [2012] O.J. No. 5892 (SCJ), Cavarzan, J.

Injury: The plaintiff, 25, alleged chronic pain as a result of the accident, including headaches, pain in the right side of the lower jaw, painful neck and shoulders with tingling down the arms, sore upper, mid and lower back with pain down the legs, sore knees and calves, as well as whole body pain.

Impact on Employment: The plaintiff returned to her job as debt-collector five months post-accident. She then left her employment after an 18-month period, ostensibly on the advice of her doctor.

Impact on Daily Activities: Not particularized.

Justice Cavarzan's Key Findings:

- **Pre-existing conditions:** The plaintiff had significant pre-existing medical conditions which compromised her ability to work and function. Carpal tunnel syndrome caused her to be off

work for 11 months prior to the accident. The plaintiff also suffered from considerable stress and anxiety due to her employment as a debt recovery officer and serious personal and family issues, and had been diagnosed with chronic anxiety.

- **Credibility:** The plaintiff provided inaccurate, incomplete and misleading information to various medical practitioners, including with respect to the improvements in her symptoms following treatment. Her subjective reports of the pain and post-accident limitations were unreliable.
- **Treatment:** The treating chiropractor and psychologist testified that the plaintiff had improved with treatment, and was expected to respond favourably to further treatment. Despite favourable response to treatment, the plaintiff terminated physiotherapy and psychotherapy.

The plaintiff's chronic pain was not disputed. At issue was causation and the extent of impairment. Justice Cavarzan concluded that the plaintiff has established no physical indications, nor any neurological cause for any impairment. By failing to show that her injuries from the accident were either serious or permanent, the plaintiff failed to meet the threshold.

4. *Stepstone v. Cook et al.*, [2013] O.J. No. 802 (SCJ), M.L. Edwards, J.

Injury: The plaintiff had been involved in two motor vehicle accidents – in 2000 (the "2000 Accident") and in 2006 (the "2006 Accident") respectively, with only the latter accident being the subject of the action. The plaintiff, 38, asserted that the 2006 Accident exacerbated the injuries she sustained in 2000 to her right shoulder and lower back.

Impact on Employment: The plaintiff was employed at the Honda assembly plant.

¹¹ The court relied on the Court of Appeal decision in *Kasap v. MacCallum* [2001], O.J. No. 1719, which stands for the proposition that the court is entitled (but not obligated) to consider the jury's verdict in determining whether the threshold had been met.

No particulars as to the impact on employment were provided.

Impact on Daily Activities: Not particularized.

Justice Edwards' Key Findings:

- **Pre-existing conditions:** The plaintiff sustained significant injury (requiring surgery) to her right shoulder in the 2000 Accident, from which she had not recovered. She also had a history of depression which predated both accidents.
- **Treatment:** The plaintiff made very few visits to her family physician in connection with her alleged accident-related injuries. In fact, there were no visits at all in the years 2010 and 2011. The frequency of the visits increased only as the matter was nearing trial. Moreover, while she was being treated with a narcotic patch for her low back pain at the time of trial, the plaintiff made *no complaints of back pain in the 4-year period (2008-2011) post-accident*. In these circumstances, the court concluded that there was no causal relationship between the plaintiff's back pain at the time of trial and the 2006 Accident.
- **Experts:** Dr. Vandersluis (an orthopedic surgeon), was described as an advocate for the plaintiff. His evidence was rejected, including his opinion that the plaintiff suffered a partial thickness tear as a result of the 2006 Accident. The opinion of Dr. Richards was described as useless given that his report made no mention: (1) of the plaintiff's involvement in the 2000 Accident; (2) of the fact that he had assessed the plaintiff following the 2000 Accident; and (3) that he was of the view at that time that the plaintiff was permanently disabled as a result of the 2000 Accident.

Citing *Kasap, supra*, Justice Edwards considered the jury's finding that the plaintiff was not entitled to any recovery for future loss of income or future loss of housekeeping services, and the relatively nominal awards made for general damages and future care costs (\$7,500 each). This award suggested that the jury did not accept that the plaintiff has suffered a serious impairment, but rather agreed with the defence's theory that, at most, the accident caused only a minor exacerbation of the plaintiff's pre-existing injuries.

5. *Perez v. Pinto*, [2013] O.J. No. 1348 (SCJ), McEwen, J.

Injury: The plaintiff¹² advanced claims for permanent impairment of an important physical function (not specified). No claims were advanced in relation to the impairment of any psychological functions.

Impact on Employment: Although the plaintiff failed to return to her pre-accident employment as a janitor, Justice McEwen found that this was not due to her injuries, but rather due to her disinterest in returning to work.

Impact on Activities/Daily Living: Notwithstanding the plaintiff's failure to return to work, she was able to regularly attend college. The plaintiff's inability to finish the college program was similarly due to her difficulties with the curriculum, rather than her accident-related injuries.

Credibility: Justice McEwen found that the plaintiff was not a credible witness. Her complaints to her treating physicians were inconsistent and sporadic, and she did not mention the accident to one of her regular treating physicians until *four years* after it occurred. Justice McEwen held that the plaintiff tended to exaggerate the symptoms stemming from the "modest injuries" she sustained as a result of the accident.

¹² Note: age not specified.

Justice McEwen observed at trial that it did not appear that the plaintiff “suffer[ed] from any sort of pain, discomfort, or any limitation in her range of movement”. In the result, the court held that the plaintiff has not discharged her onus of establishing that she sustained a permanent, serious impairment of any important physical function. In arriving at this conclusion, the court also took note of the jury’s assessment of the plaintiff’s damages for pain and suffering and loss of enjoyment of life in the amount of merely \$2,500.

Decisions Where the Threshold Was Met

Each case will turn on its own facts, and in a number of recent decisions the courts have concluded that the plaintiff’s injuries *did*, in fact, meet the requisite threshold.¹³ Even in those cases, however, the courts emphasized that Bill 198 was intended to tighten up the threshold, by “reduc[ing] the discretion available to judges in interpreting the various components of the definition”¹⁴ and by “raising the bar for prospective plaintiffs”.¹⁵

Generally, the difference in outcomes between the recent cases where the threshold was met and those where it failed to be met is explained not by a contrasting interpretive approach, but rather by the application of Bill 198 to a specific set of facts.¹⁶ While a fulsome review of these decisions is beyond the scope of this paper, in cases where the plaintiff successfully discharged his or her onus on a threshold motion:

- the plaintiff was a credible witness (*Antinozzi v. Andrews*, *Ivens v. Lesperance*, *Adams v. Taylor*, *Glass v. Glass*);
- the plaintiff established that the impairment had significantly interfered with his or her employment (*Ivens v. Lesperance*, *Adams v. Taylor*, *Beadar v. Evans*) and/or activities of daily living (*Ivens v. Lesperance*, *Adams v. Taylor*, *Glass v. Glass*);
- medical evidence established that the impairment was unlikely to improve, irrespective of any further medical intervention; (*Ivens v. Lesperance*, *Adams v. Taylor*, *Glass v. Glass*);
- the jury awarded considerable damages; (*Ivens v. Lesperance*, *Glass v. Glass*); Most recently, in *Gilbert v. South*, *supra* the jury awarded \$40,000 in general damages, \$57,250 for future care, \$85,000 for housekeeping, \$5,800 for pre-trial loss and \$250,000 for future income loss;
- other witnesses (both medical and lay witnesses) corroborated the plaintiff’s evidence; (*Adams v. Taylor*, *Beadar v. Evans*) and
- neither the partiality of the plaintiff’s experts’, nor the foundation for their opinions was seriously challenged, and these opinions were accepted by the court. (*Adams v. Taylor*)

Lessons Learned From Recent Case Law

Taken together, recent decisions signal a more restrictive approach to the Bill 198 interpretation being espoused by the courts in appropriate circumstances. In essence, the foregoing review indicates that it is far from a given that the threshold under Bill 198 will be met, even where the plaintiff complains of significant and debilitating injuries, receives treatment (including surgical treatment) for same, and sees multiple medical practitioners in connection with the

¹³ See, for instance, *Valdez v. Clarke*, [2010] CarswellOnt 30, 2010 ONSC 174; *Antinozzi v. Andrews*, [2011] O.J. No. 3335 (SCJ); *Ivens v. Lesperance*, [2012] ONSC 4280 (CanLII); *Beadar v. Evans* [2012] O.J. No. 5115 (SCJ); *Glass v. Glass*, [2013] O.J. No. 2602 (SCJ); *Adams v. Taylor*, 2013 ONSC 7920 (SCJ); and *Gilbert v. South*, [2014] O.J. No. 1874 (SCJ). **Note:** This list is not intended to be exhaustive.

¹⁴ *Valdez v. Clarke*, *supra* at para 40

¹⁵ *Antinozzi v. Andrews*, *supra* at para 5

¹⁶ Justice Smith’s decision in *Adams v. Taylor*, *supra*, where he expressly sided with Justice Morissette’s view in *Nissan*, *supra* is one notable exception.

injuries complained of. The outcome of every threshold motion is fact specific. And while no two threshold motions will be identical, there are a number of lessons to be gleaned from the recent case law. These are discussed in turn below.

Credibility: While there is seldom a case where credibility is unimportant, both the credibility and the reliability of the plaintiff's evidence are absolutely central to any threshold motion. Here, the importance of cross-examination should not be underestimated: in the cases reviewed above, successful defendants exposed contradictions, gaps and inconsistencies in the evidence given by the plaintiff and his or her family members, while demonstrating the plaintiff's tendency to overstate his limitations and understate his abilities. Such inconsistencies may not have been immediately obvious at discovery, but were demonstrated through skillful cross-examination at trial. Cross-examination at trial has a further benefit of a complete medical record which is typically not available at discovery or even at mediation. Challenges to credibility are especially important where the plaintiff's pain complaints are not the result of any obvious or discernible physical injury.

Surveillance: Surveillance is a very powerful tool in the hands of the defendant on a threshold motion. Not only does it serve to undermine the plaintiff's claims as to the impact of the injuries on his or her employment and daily activities, but in the cases reviewed above, it proved to be devastating to the plaintiffs' credibility generally.

Pain: In the vast majority of cases where the threshold issue is raised, the plaintiff's main complaint is "pain". But pain alone is insufficient: the onus is on the plaintiff to demonstrate that the pain he or she is experiencing has legitimately resulted in "*substantial interference*" with his or her employment and activities of daily living. The requirements of section 267.5(5) in

this regard were aptly summarized by Justice Mackinnon in his recent decision in *Vancsody v. Wrightman* as follows:

A plaintiff must do more than simply experience pain in order to bring himself within the exception to the threshold wording on the test provided. Injured Ontarians are required to bear some interference with their enjoyment of life without being able to sue for it. Tolerable symptoms do not bring a plaintiff within the exceptions in Section 267.5(5) of the Act. If a plaintiff is able to function well despite his symptoms, then the plaintiff does not come within the exception and the defendant will have been successful on the motion.¹⁷

Given that pain is subjective, surveillance tends to be instrumental in demonstrating the disparity between the plaintiff's self-reports of pain and his or her actual pain experience.

Permanent impairment: While the term "permanent" does not mean "strictly forever unto death", it certainly "bears the sense of a weakened condition lasting into indefinite future without any end limit".¹⁸ In cases where the plaintiff's impairments are expected to either improve or cease with time or with further treatment, it is unlikely that the threshold will be met.

Pre-existing conditions: Only the injuries *caused* by the accident are relevant to a threshold determination. Thus, the plaintiff's pre-existing medical history, as well pre-accident psychological and emotional stressors or substance abuse problems, if any, are among the key factors to be considered.

Continuous treatment: It is to be expected that a person who experiences pain or other symptoms from a serious injury would seek regular medical

¹⁷ *Vancsody v. Wrightman*, [2012] O.J. No. 6517 at para. 6 (SCJ)

¹⁸ *Vancsody*, supra, at para. 10

treatment from health professionals, and would heed the advice of such professionals regarding recommended treatment. As the cases above illustrate, the courts are reluctant to find a permanent serious impairment where the plaintiff has not undergone *continuous* treatment from the date of the accident to the time of trial.

Expert Opinion: Meeting the threshold is unlikely where the plaintiff's medical evidence is compromised. Strong, credible medical opinion is necessary. The expert's medical opinion will typically be rejected or given reduced weight where the expert: (1) was not fully informed as to the plaintiff's pre-accident medical history or pre-existing conditions; (2) showed over-reliance on the plaintiff's self-reporting of limitations, particularly where the plaintiff's own credibility was at issue; (3) conducted himself as an advocate; and (4) spent insufficient time with the plaintiff before reaching a diagnosis.

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Rush to trial: A defendant is well-advised to emphasize any available medical evidence which demonstrates that a plaintiff has not reached maximum medical recovery at the time of trial (see *Iannarella, supra*). From a practical standpoint, the *timing* of a threshold motion may be a factor: a defendant might consider moving appropriate cases to trial as expeditiously as possible, so as to take advantage of the 'rush to trial' argument successfully made in *Iannarella*.

Jury Awards: Courts have held that a jury's decision to award relatively nominal amounts for certain heads of damage (including loss of income and future care costs) is a factor that could be taken into account by a judge in reaching his or her conclusion that the plaintiff's injuries do not meet the threshold within the meaning of Bill 198.

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