Neuropsychological & psychological deficits due to closed head injury following impact by a golf ball

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Closed head injury produced by a variety of sources, eg. physical assault, whiplash, MVA trauma, slippage, may result in short-term and/or long-term neuropsychological deficits. This paper highlights an uncommon source - the golf ball head injury. Two cases will be examined with names changed for confidentiality.

Case number one is Mrs Primrose a 55-year-old woman injured whilst playing golf. At the time Mrs. Primrose was working as an accountant and had been for thirty years. She had no prior history of significant head injuries, psychiatric illness, drug addiction, or illness. She enjoyed a happy marriage, healthy sex life and was in good physical health. Gainfully employed she anticipated working at least another five years.

A keen golfer, Mrs Primrose had never before experienced injury whilst playing. The golf ball approached at speed from 50m, and struck on the left side of the head. She fell to the ground then experienced a two minute period of unconsciousness.

Mrs Primrose reported that almost immediately following injury she began experiencing symptoms of post-concussive syndrome (eg. headache, nausea, mental confusion, and dizziness). Despite persistent symptoms, she returned to work three weeks following injury. There, Mrs Primrose found previously simple tasks involving concentration and attention difficult and developed frequent, severe headaches. Post-concussive symptoms persisted along with blurred vision, ringing in the ears, co-ordination problems, dizziness and insomnia.

Mrs Primrose also developed problems with memory, distractibility, concentration, attention, clear thinking, reading and writing, following instructions and conversation.

Psychologically, Mrs Primrose deteriorated. The persistent physical and cognitive symptoms resulted in severe depression and anxiety. Her marriage broke down. After three months, and further deterioration, Mrs Primrose was asked to leave her job.

Upon examination and assessment some eight years following injury, the symptoms reported were confirmed (they are all common of closed head injury patients). Psychological assessment revealed a Major Depressive and Generalised Anxiety Disorder, which are also seen with such patients.

Neuropsychological assessment revealed deficits in short-term auditory memory, attention, concentration, and visual memory, as well as abnormal levels of distractibility.

Tests for malingering (feigning) proved negative, indicating that results were reli-

Legal Affairs

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Rivkin's idea wins consumer backing

Chris Merritt
Law Correspondent

Mr Rene Rivkin's revolutionary venture into financing litigation was denounced by the leaders of the legal profession this week, but welcomed by consumers.

The profession's leaders warned that there was no real need for Mr Rivkin's Justice Corporation Pty Ltd, but his Sydney staff was swamped by consumer demand.

By week's end, the company was processing 200 requests for financing, including six requests from consumer groups seeking backing for class actions.

It was also assessing 20 to 30 inquiries from individual lawyers and law firms that were keen to run some of those cases.

The NSW Legal Aid Commission is also examining the bona fides of Justice Corporation.

Talks will be held next week that could lead to the commission referring some commercial cases to Mr Rivkin for funding, according to Justice Corporation's general manager, Mr Peter Farthing.

Despite the strong response from consumers, the profession's leaders are concerned about the company's business plan, which relies on financing litigation in return for a percentage of any winnings.

This structure appears to sidestep State laws that have prevented the introduction of US-style contingency fees. Those laws are aimed at lawyers, not financiers.

The president of the Law Council of Australia, Mr Bret Walker SC, said he saw no social need for the company. The president of the NSW Law Society, Mr Ron Heinrich, said the company's structure meant Mr Rivkin would be "getting money for jam".

Mr Walker said the company would:

☐ Introduce another claimant on clients' funds.

☐ Be affected by a conflict of interest whenever it had to consider settlement offers.

☐ Inadvertently mean introducing contingency fees without an upper limit, which was worse than the American system.

Mr Andrew Rayment, who has a 49 per cent stake in the company, said he agreed with Mr Walker on the need for fees to be regulated, but he preferred a system of "self-imposed regulation" involving court-approved contracts with clients.

The company's launch also triggered a debate about the restrictions on lawyers' fees that prevent them matching Mr Rivkin's structure.

Those fee restrictions, which vary slightly from State to State, generally mean that the only financial reward available to lawyers for financing a client's case is an "uplift factor" based on a percentage of normal fees. In NSW that percentage is capped at 25 per cent.

Unlike Mr Rivkin, lawyers cannot charge fees that are based on a percentage of a client's winnings.

But while the "uplift factor" might provide sufficient incentive to finance small to medium-sized cases, some lawyers said it would sometimes not cover the interest bill for financing very complicated or expensive cases.

This meant plaintiffs with few resources sometimes experienced great difficulting in running cases against wealthy defendants [see report, next page].

The president of the Australian Plaintiff Lawyers' Association, Mr Peter Carter, said it was time for governments to consider allowing lawyers to offer US-style contingency arrangements.

However, Mr Rayment said the policy behind the ban on contingency fees was aimed at preventing lawyers having a conflict of interest. He favoured maintaining that ban for lawyers.

Yesterday, the NSW Government announced that the fee restrictions would be reviewed as part of a broader inquiry into the operation of the NSW Legal Profession Act.

Despite the impact Mr Rivkin has already made on the legal industry, doubts still exist about whether his business plan is legally enforceable. The company is looking for a test case to resolve those doubts.

Once that case is identified, it is hoping the courts will rule on whether contracts based on the ancient tort of champerty – or encouraging litigation for a fee – are legally enforceable.

According to Mr Rayment an adverse outcome in the courts would mean the company would then seek legislative intervention.

In return for legislation, he proposed that all companies funding civil litigation should be charged a small levy that could be earmarked for legal aid.