

# Case Alert

Shaping the future of insurance law

## \$3.5+ million in damages awarded in child sexual abuse case

### *MC v Morris [2019] NSWSC 1326*

14 OCTOBER 2019

#### AT A GLANCE

- In this case, Judge Fagan of the NSW Supreme Court assessed damages for a man who suffered a psychological injury following historic child sexual abuse.
- As a result of the abuse, the plaintiff suffered from post-traumatic stress disorder, major depression, medication-related obesity and other related health issues.
- The defendant had previously plead guilty to related criminal offences, did not file a defence in the civil proceedings and did not provide any expert evidence.
- The significant damages assessed at common law of more than \$3.5 million represent the upper limit Courts are likely to award.
- Insurers and institutional defendants should review this decision as it highlights the importance of providing expert evidence, particularly on issues of economic loss.

#### BACKGROUND

In the mid-1990s the plaintiff, when aged between 13 and 15, performed lawn-mowing and maintenance work for people in the neighbourhood, including the defendant. The defendant groomed the child and sexually abused him during this period.

In 2017, the plaintiff – then in his 30s – went to police and reported the abuse. The defendant pleaded guilty to related criminal offences and is currently in jail.

The plaintiff then commenced civil proceedings for assault and battery in the nature of sexual abuse. The defendant did not file a defence and judgment was entered for the plaintiff without contest. It is difficult to see how the defendant could have contested liability in any event given his admissions in the criminal proceedings.

#### THE DAMAGES ASSESSMENT

The matter proceeded to a damages assessment hearing on 9 September 2019. The defendant, who was represented at this hearing, made an unsuccessful adjournment application and it appears did not serve any expert evidence.

The plaintiff gave evidence that the abuse led to dysfunction in his family life and school work. His family gave evidence that his personality had changed at about the time of the abuse and that his schoolwork was compromised, culminating in expulsion.

As an adult, the plaintiff married and started a family, however the relationship broke down. He was committed to a mental health facility as an involuntary patient and attempted suicide.

The plaintiff had also worked inconsistently in his adult life, never for more than three or four months at a time, and only in unskilled roles. He has not worked at all since 2016.



**Not all psychological conditions result in a total economic loss, particularly if they are appropriately treated.**

The plaintiff tendered expert evidence that he suffered from post-traumatic stress disorder and major depression. His antidepressant medication has led to extreme weight gain and, at the time of trial, he weighed 185 kilograms. His obesity has caused further health problems.

Judge Fagan assessed damages of \$3,510,513 at common law as the Civil Liability Act did not apply. These were awarded under nine separate heads of damages, as detailed in table 1.

**IMPLICATIONS FOR INSURERS AND INSTITUTIONAL DEFENDANTS**

The quantum of the award in *MC v Morris [2019]* NSWSC 1326 is significant, as Fagan J recognised. At the end of his judgment he commented that the figure: “reflects the reality that the defendant’s predatory pursuit of his depraved sexual interest in a boy of early teenage years has all but destroyed what might have been a contented and useful life.”

Institutional defendants should view this award as potentially representing the upper limit of the range of damages the Court could award. While the case involved a strong argument for ongoing and total economic loss for psychological reason, it was unusual in that the defendant did not obtain any expert evidence to critically consider the psychological and economic loss claim.

Not all psychological conditions result in a total economic loss, particularly if they are appropriately treated. This judgment underscores the importance of obtaining good expert evidence – particularly regarding economic loss claims given those heads of damages can easily dwarf all others.

**TABLE 1 – QUANTUM ASSESSMENT**

HEAD OF DAMAGES	AWARD	COMMENT
<b>Exemplary damages</b>	Nil	No damages were allowed, as the Court’s opprobrium towards the defendant’s conduct had already been expressed in the criminal matter. This is consistent with <i>Gray v Motor Accident Commission</i> (1998) 196 CLR 1; [1998] HCA 70
<b>General and aggravated damages</b>	\$400,000	Fagan J notionally divided this sum as \$250,000 for past and \$150,000 for the future. The plaintiff’s severe psychological suffering was considered, as was his other health complications.
<b>Interest on general damages</b>	\$115,000	As damages were assessed at common law and interest was awarded on general damages. Interest was allowed at 2% for 23 years, between the last date of abuse and the quantum hearing.
<b>Past loss of earnings</b>	\$840,000	Past economic loss was assessed on the basis that the plaintiff would have earned average weekly earnings between ages 18 and 30 (\$604,679), which His Honour reduced to \$540,000 to allow for unemployment between roles. After age 30, His Honour allowed damages on the assumption that the plaintiff would have been a sheet metal worker or other skilled mechanic. Adopting average wages for such trades, a further \$400,000 was allowed. This figure (\$940,000) was reduced by \$100,000 to account for what the plaintiff actually earned.
<b>Past loss of superannuation</b>	\$92,400	Past loss of superannuation was allowed at 11% net past economic loss.
<b>Interest on past loss of earnings</b>	\$676,363	His Honour calculated interest at 8.06%, the average of the prescribed interest rate since the plaintiff’s abuse. He allowed interest on past economic loss for only nine of the 19 years, however, reflecting the fact that the loss of interest and wages was more recent than immediately after the abuse.

<b>Future loss of earnings</b>	\$1,079,483	Future economic loss was calculated on the basis that the plaintiff would continue to suffer a total economic loss until age 67, in 31 years' time, and reflected a deduction of 15% for vicissitudes.
<b>Future loss of superannuation</b>	\$152,963	Future loss of superannuation was allowed at 14.17%, applying <i>Najdovski v Crnojlovic</i> [2008] NSWCA 175.
<b>Future medical expenses</b>	\$20,000	A buffer of \$20,000 was allowed for future medical expenses, including psychiatric medication. Past out-of-pocket expenses were not claimed.
<b>Future care</b>	\$134,304	His Honour allowed \$40 per hour for commercial care and allowed three hours of domestic assistance per week given the plaintiff's psychological and now physical dysfunction.
<b>Total</b>	<b>\$3,510,513</b>	

### NEED TO KNOW MORE?

For more information please contact us.



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