

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

Dr Peter Golus and Jasmin Golus, Sydney

*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

**Merger**  
Melbourne firms tie  
the knot 27

# 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 difficulty 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 Govern-

ment 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.

able. Mrs Primrose returned for assessment six months later. This assessment's results confirmed the initial examination.

It was argued that given Mrs Primrose's age at the time, this injury merely exacerbated a natural degeneration. Reports from family and friends corroborated that Mrs Primrose was in sound health with no family history of early dementia, Alzheimer's or Parkinson's disease etc. In fact, two years prior to assessment Mrs Primrose was examined by another Neuropsychologist. My assessment showed slight improvement in cognitive functioning. Degenerative diseases would have seen deterioration.

The weight of evidence from medical and allied specialists, and the earlier assessment suggested that Mrs Primrose sustained closed head injury, and cognitive deficit due to closed head injury by impact of a golfball.

#### Golfing caddy

Case study number two involves a young (16 year old) male golfing caddy who was also struck on the side of the head by a golfball travelling at speed from a distance. Mr James experienced no unconsciousness following injury, however, he did report that he "fell asleep for two days" about six hours after the injury.

Two days later, Mr James experienced a grand mal seizure. Three weeks later, he experienced a further grand mal seizure. Four months later he experienced two petit mal seizures.

Fortunately, just prior to injury, Mr James had undertaken a Wechsler Intelligence Scale For Children - Revised in application for a Year 11 scholarship. This assessment showed Mr James' IQ to be at Superior level. Intelligence scores ranges from Mentally Defective through Borderline, Below Average, Low Average, Average, High Average, Superior to Very Superior. Based on his IQ and scholastic performance to date Mr James received his scholarship and planned a career in psychology and law. The injury occurred during the holidays before the start of Year 11.

When Mr James returned to the schooling environment, he noticed increasing difficulties with concentration, attention and comprehension. Dismissing these as 'senior school nerves' he persisted with study and attended tutoring. After

three months, the cognitive difficulties had not abated. Half-year reports were disappointing with the usually A+ student, performing at the B- and C level.

Psychologically, Mr James developed depression and anxiety. His parents dismissed this initially as 'hormonal' and part of growing up. Physically, Mr James was far less co-ordinated, had poorer balance and was unable to enjoy normal sporting activities.

One year following injury, Mr James presented for assessment. Tutoring, counselling, and medication had proven ineffective and yielded no explanation. Assessment revealed Mr James' intelligence had significantly decreased in comparison to one year earlier. His IQ was now at the Average to High Average level. No other evidence explained this decline except the closed head injury. Assessment also revealed significant deficits in short-term auditory memory, attention, concentration, and visual memory. Malingering tests were negative, results considered reliable.

Personality assessment indicated Major Depressive Disorder and Generalised Anxiety Disorder. Conference with parents and teachers regarding pre- and post-injury behaviour, school performance and health, combined with the weight of evidence from assessment, led to the opinion that the golfball injury resulted in cognitive deficits due to closed head injury.

These two cases demonstrate that neuropsychological damage is possible from a single injury by a golfball. Both cases yielded such similar cognitive, psychological and physical symptoms despite the obvious differences in gender, age, and pre-accident ability. These are not isolated cases, I have had cause to examine many dozens of sports injuries resulting in neuropsychological deficit.

Given that golfballs are small, and do not frequently impact with human skulls, we can only postulate what amount of damage is sustained under the weight of baseballs, cricketballs, and repeated pounding in sports such as boxing, and football. ■

**Dr Peter Golus** of Psych Quest is a Neuropsychologist specialising in psychological and neuropsychological assessment and rehabilitation for medico-legal purposes. Both Peter and Jasmin are members of APLA and can be contacted on **phone** 02 9818 3485 or **fax** 02 9810 2934

## Death-bed hearings outlawed

TRACY SUTHERLAND

**PEOPLE** dying of asbestosis and mesothelioma will no longer be subject to distressing death-bed compensation hearings, under laws announced by the NSW Government yesterday.

Introducing the first laws of their kind in Australia, Attorney-General Jeff Shaw said the Government would end a bar on general damages being paid to the families of victims who died before their compensation claims were finalised.

"The changes will put an end to the harrowing death-bed hearings that have been necessary in the past," said Mr Shaw, adding that people endured the hearings in a desperate attempt to secure the future of their families before they died.

Mesothelioma sufferers commonly have less than a year to live after being diagnosed, often making bedside hearings unavoidable.

Due to its historically high level of asbestos use, Australia has the highest incidence of mesothelioma per capita in the world, with NSW accounting for up to 40 per cent of these cases. Around 100 people die of dust diseases each year in NSW.

Robert Favelle's 79-year-old father Alex died of mesothelioma two weeks ago, after working as a boilermaker among ship steam pipes containing asbestos.

Mr Favelle said his father clung painfully to life to finalise his \$130,000 compensation claim just a day before he passed away.

"It was very painful for the family to see him hanging on," said Mr Favelle. "The impact was that it made him weaker, he was having to force himself to stay awake to answer questions."

Had the bedside hearing not been necessary two weeks ago, "it would have taken a great load off my father's mind", Mr Favelle said.

The Australian 18/5 1998. Reproduced with permission.