If someone (person A) reduces the value of a claim you have against someone else (person B), can you recover the loss in the value of the claim from A?

The English Court of Appeal has recently considered this question in the case *Haxton v Philips Electronics UK Ltd* [2014] EWCA Civ 4. Mr and Mrs Haxton contracted mesothelioma - a terminal disease caused by the inhalation of asbestos fibres. Mr Haxton contracted the disease when working as an electrician. He later died. Sadly, Mrs Haxton inhaled asbestos fibres when washing her husband's work clothes. By the time Mr Haxton's employer admitted liability for negligently causing the Haxtons' disease, medical experts predicted Mrs Haxton would only survive a matter of months.

Nevertheless, Mrs Haxton lived long enough to issue court proceedings against the employer. The claims included compensation for the death of her husband on whom she was dependent. The employer accepted liability. However, Mrs Haxton accepted that she would only suffer loss for the duration she remained alive. Given her impending predicted death, the parties agreed that the quantum of damages should be limited to her remaining life expectancy of 0.7 years.

Mrs Haxton then began a new claim against the employer. She claimed that but-for the employer's negligence her life would not have been cut short and so the damages available from the first claim would have been significantly greater. The question facing the Court of Appeal was whether the employer should compensate Mrs Haxton for the reducing the value of her first claim.

Although personal injury claims like Mrs Haxton's are captured by New Zealand's ACC regime, the *Haxton* case raises important issues relevant to New Zealand law. Take for example a situation where a wrongdoer (A) damages a transport contractor's (B) vehicle. The measure of damages could reflect the loss of profits on existing contracts that B cannot fulfil while its vehicle is out of action. However, the claim for loss of profits is limited because the other contracting party (C) had unlawfully repudiated or cancelled the contract. Should B be able to claim the losses from C that he or she would otherwise have been able to claim against A?

Take an alternative example where a landlord (A) has wrongfully terminated a lease causing the tenant (B) significant losses arising from business interruption. After the termination, a local council (C) negligently causes a water pipe to burst which would have prevented access to the tenanted premises in any event. A therefore argues that its liability should be limited to reflect the fact that, regardless of the unlawful termination, B would have suffered loss anyway. Should B be able to claim against C for the way C's negligence has affected B's claim against A?

The English Court of Appeal's view, as explained in the *Haxton* decision, is yes. The English Court of Appeal looked at the heart of Mrs Haxton's case. It characterised her claim as a claim for diminution in the value of a valuable chose in action (in this case a claim for compensation). The Court held that in principle such loss is recoverable. The Court added that it was not material whether the person who caused the devalue in the claim was the same party (as in the case of Mr Haxton's employer) or a different party.

The Court drew assistance from the recent English case *Fox v British Airways* [2013] EWCA Civ 972. In that case the claimant died three weeks after he had been dismissed from his employment. Had he not been dismissed, his dependants would have benefited from a "death in service" payment of three times his salary conferred by terms of his pension scheme contract. The deceased's father argued the claimant had been wrongfully dismissed. The Court in the *Fox* case accepted that the loss or diminution of a contractual right under the pension scheme was recoverable by the claimant's father. Likewise, the Court of Appeal explained, Mrs Haxton could recover for the loss of the diminution of value to her first claim against her employer.
The Haxton case may arise from unusual circumstances. Nevertheless, the decision shows that the courts are willing to award a remedy where the value of a person's claim has been wrongfully reduced.

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