

CANADA / JUDGMENT

Boal v. Parilla

2022 BCSC 2075

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Supreme Court of British Columbia

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2022 BCSC 2075 Boal v. Parilla

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Boal v. Parilla,

2022 BCSC 2075

Date: 20221129

Docket: M176205

Registry: Vancouver

Between:

Heather Diane Boal

Plaintiff

And

Maria Parilla and Jezer Eriko Lagman

Defendants

Before: The Honourable Madam Justice Warren

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

May 30-31, June 1-3, 6-9,

and 13-15, 2022

Place and Date of Judgment:

Vancouver, B.C.

November 29, 2022

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Introduction

- [1] The plaintiff, Heather Diane Boal, claims damages for injuries sustained in a car accident that occurred on March 10, 2016, in the intersection of Parker Street and Madison Avenue in Burnaby, British Columbia (the "Accident"). Liability has been admitted, but the defendants assert that Ms. Boal was contributorily negligent.
- [2] Ms. Boal alleges that the Accident caused injuries to her neck, right shoulder, trapezius, and chest wall that resulted in pain and tightness in those areas, nerve pain shooting into her arm and hand, lock jaw, severe headaches, depression, and anxiety. She says she continues to suffer from debilitating symptoms associated with the injuries. She has been diagnosed with chronic myofascial pain syndrome, thoracic outlet syndrome, irritation of the jaw, chronic headaches, somatic symptom disorder, chronic adjustment disorder, and persistent depressive disorder. She alleges that the injuries have dramatically altered her life, left her permanently disabled and competitively unemployable, and that there is little if any prospect of improvement in her condition. She claims non-pecuniary damages, past wage loss, damages for loss of future earning capacity, damages for cost of future care, and special damages, and she advances an in-trust claim for services performed by her husband, Steven Boal. In total, she quantifies her claim at \$2,990,000.
- [3] The defendants concede that Ms. Boal sustained the injuries she alleges in the Accident, and that those injuries have resulted in pain, headaches, and psychological symptoms. However, the defence disputes Ms. Boal's characterization of her prognosis and says her psychological issues, headaches, and pain may improve with additional treatment. The defence also disputes the extent to which the injuries impact Ms. Boal's ability to function in both work and non-work activities. The defendants say that, at minimum, Ms. Boal can work in a part-time accommodated position, and if her condition improves she could work full-time with accommodations. The defence quantifies the claim at \$936,169.53, less 10 percent to 15 percent for Ms. Boal's contributory negligence.

Summary of the Evidence

The Plaintiff's Background and Pre-Accident History

- [4] Ms. Boal was 32 years old at the time of the Accident and 38 years old at the time of the trial. She resides with her husband, Steven Boal; her son from a previous relationship, Ethan; Mr. Boal's son from a previous relationship, Nicholas; and Jackson, who is the son of Ms. Boal and Mr. Boal. At the time of the trial Ethan was 13 years old, Nicholas was 12 years old, and Jackson was 3 years old. The family resides in a townhouse in the Adanac Housing Co-op in East Vancouver.
- [5] Ms. Boal grew up in East Vancouver. Her family lived in the Adanac Co-op. She is the second oldest of five siblings. The family home was always clean and organized, which Ms. Boal mirrored as an adult, maintaining an immaculate home.
- [6] In her teens, Ms. Boal worked part-time while attending school and she also helped care for her younger siblings.
- [7] Ms. Boal graduated from Templeton Secondary School in 2002. She was academically strong and attended a program for "gifted" students at Templeton.
- [8] In September 2002, Ms. Boal began attending Capilano College in a full-time, general studies program, with a health science focus. She was considering a career in nursing. She moved out on her own and, in addition to attending college full-time, she worked multiple part-time jobs. After three semesters, she withdrew from Capilano College because she found it overwhelming to work as much as she was working while also attending school.
- [9] Commencing in 2005, Ms. Boal attended Rhodes Wellness College, a private educational institution in Vancouver, where she completed a diploma program in life coaching, goal setting, and counselling. This was an 18-month, full-time program, and included two practicums which she completed at Ocean Wellness, a multi-disciplinary clinic in North Vancouver. After completing the program, Ms. Boal was hired by Ocean Wellness as a counsellor and life coach. She worked there for about a year. She did not have many clients, found the sales aspect of the job difficult, and made little income.
- [10] In 2007, Ms. Boal took a position with the Insurance Corporation of British Columbia ("ICBC") as a customer service representative ("CSR") in the drivers licensing office in North Vancouver. It was her intention to eventually seek a position in ICBC's Wellness Department, which she said she understood would be easier to do as an internal candidate than as an external candidate. The ICBC CSR position provided Ms. Boal with union membership, job security, a pension, paid sick leave, and vacation. Her starting wage was \$23 per hour and over the years she has received wage increases in accordance with the collective agreement.

- [11] The CSR position at ICBC was an administrative one, involving collecting documentation, taking photographs, correlating information, dealing with vehicle impounds and driver penalty programs, and managing court documents. It was a light-duty position with physical demands that included prolonged sitting on a raised stool, standing, reaching, talking on the phone, and computer work.
- [12] Ms. Boal became pregnant with Ethan in January 2008. She took a 10-month maternity leave after his birth and then returned to ICBC.
- [13] Ms. Boal worked as a CSR at ICBC for about five years, occasionally serving as an acting supervisor. In 2012, she began working as a driving examiner for ICBC, which was a promotion. A significant part of that job was administering the road test component of the British Columbia drivers licensing program. She conducted between five and nine road tests each work day.
- [14] Ms. Boal met Steven Boal at ICBC. He was also employed there. At the time of the trial, he was a supervisor and occasional acting manager in the Driving Examiner Department at the Burnaby office. Ms. Boal and Mr. Boal became romantically involved in 2012, after her separation from her first spouse. They moved in together later that year. They each have shared custody of their respective sons, who reside with them on a week-on, week-off schedule.
- [15] In 2015, Ms. Boal transferred to the ICBC drivers licencing office in Burnaby. Her annual employment income in 2015, the year before the Accident, was \$57,739 (without including non-wage benefits).
- [16] In March 2016, shortly before the Accident, Ms. Boal applied to ICBC for a "program lead" position in the Wellness Department. The job posting indicated that it paid between \$70,000 and \$87,000 per year and, among other things, a Bachelor's degree in a health-related field was required. Ms. Boal testified that during her years working at ICBC she had become aware of ICBC waiving formal requirements for internal candidates. In the cover letter she sent with her application, she claimed to have "10 years of experience as a professional counsellor, wellness coach and mentor". She testified that this was the first time she had applied for a position in the Wellness Department and if she did not secure this position, she intended to continue to apply for similar positions. The Accident occurred before the competition closed.
- [17] Ms. Boal testified that before the Accident she was happy and led an active and social life. She had always been an athletic person and in the years before the Accident enjoyed hiking, swimming, bike-riding, and playing sports with her children. She had been involved in Little League baseball all her life. Ethan and Nicholas both played baseball, Ethan at a high level, and she served as team manager for years. Her brother, L.J. MacVicar, coached Ethan's team and Mr. Boal also served as a coach. The family spent a lot of time at the ball park and baseball was a significant part of their social lives. Ms. Boal also enjoyed socializing with friends and hosting dinner parties for family and friends. She and Mr. Boal attended

concerts and sporting events together, went dancing and enjoyed travelling. She testified that she had no mood issues to speak of.

- [18] Prior to the Accident, Ms. Boal was in good health. She testified that she had occasional headaches that she referred to, at the time, as migraines, but she said they were not debilitating and she would no longer characterize them as migraines because their severity paled in comparison with the headaches she has experienced since the Accident. She characterized her pre-Accident headaches as tension headaches. She said they were not accompanied by an aura, nausea, or light sensitivity, and they did not impact her lifestyle or functionality. In the summer of 2015, Ms. Boal attended a registered massage therapist and a chiropractor for right-sided neck pain. She testified the pain quickly resolved. She had a ganglion cyst removed from her wrist in 2014. None of the medical experts considered this history to be significant or relevant to her current complaints.
- [19] Ms. Boal's testimony about her pre-Accident personality and lifestyle was corroborated by Steven Boal, as well as Ms. Boal's mother, Carol Creamore; her brother, Mr. MacVicar; her sister-in-law, Nassim Boal; and her childhood friend, Rachel Radford. These witnesses testified that before the Accident Ms. Boal was a very social person who took pride in her appearance; her make-up and hair were always done, she regularly wore high heels, and she always looked fabulous. They said her home was always neat and tidy, and the laundry was always done. Mr. Boal said Ms. Boal was a very active and involved parent. His evidence about their pre-Accident lifestyle and activities aligned with that of Ms. Boal. Ms. Creamore noted that before the Accident, Ms. Boal often entertained the family in her home. She characterized Ms. Boal as high-energy and upbeat. Ms. Radford described Ms. Boal's pre-Accident personality as very confident. She said Ms. Boal was the life of the party. Nassim Boal said that she and Ms. Boal attended concerts, dinners, and comedy shows together, and they enjoyed travelling together. Mr. MacVicar characterized Ms. Boal as smart, active, and very outgoing. He testified that before the Accident she was actively involved in Ethan's baseball team, serving as team manager and regularly attending games and team-related events.

The Accident

- [20] As noted, the Accident occurred on March 10, 2016. Ms. Boal was administering the road test component of a driving exam to the defendant, Ms. Parilla, in a Toyota Corolla owed by the defendant, Mr. Lagman. He operated a driving school where Ms. Parilla had taken lessons. The Toyota was modified for driving lessons. Among other things, it was equipped with a dummy brake pedal on the floor in front of the passenger seat, which was attached by a rod to the driver's brake pedal.

- [21] About twenty minutes into the road test, Ms. Parilla committed a steering error that caused the Toyota to turn into the oncoming lane of traffic. No collision resulted but Ms. Boal determined that Ms. Parilla had failed the test. She did not tell Ms. Parilla that she had failed but she directed Ms. Parilla to return to the ICBC office. Ms. Boal testified that this was in accordance with ICBC policy, which precludes driving examiners from driving an examinee's vehicle.
- [22] En route to the ICBC office, Ms. Parilla drove west on Parker Street in Burnaby and intended to turn left, or south, on Madison Avenue. After she entered the intersection, Ms. Boal directed Ms. Parilla to proceed. Ms. Parilla accelerated and overturned to the left, driving towards a vehicle that was stopped at a stop sign on Madison Avenue, heading north. Ms. Boal testified that in response, she instinctively yelled stop, pressed as hard as she could on the passenger side brake pedal, turned in her seat, and reached across and grabbed the steering wheel with her right hand. She said she pulled the wheel hard to the right. She was able to alter the Toyota's course away from the driver's door of the other vehicle. The front driver's side corner of the Toyota collided with the back wheel well of the other vehicle.
- [23] Ms. Parilla testified that as she turned towards the other vehicle, Ms. Boal said "stop, stop, stop" but she does not recall her taking any other action. She acknowledged that it was a long time ago, it was scary, and she was shaken up. Her lack of recall is not surprising in the circumstances and I do not consider her description of the Accident to be inconsistent with that of Ms. Boal.
- [24] Ms. Boal testified that the impact of the collision was forceful and she was surprised the airbags did not deploy. She said she was twisted in her seat at the time of impact and was thrown forward, stopped by the seatbelt, and then thrown backward. She said she started to feel discomfort in her neck (right side), upper right shoulder, trapezius, and chest wall at the scene of the Accident.
- [25] Ms. Boal directed Ms. Parilla to return to the ICBC office using the safest route. She testified that upon arriving back at the office, she took an Advil and started to complete a form to report the Accident but found it difficult to gather her thoughts. Her father picked her up from work early and drove her home.

Post-Accident Condition and Treatment

- [26] Ms. Boal testified that her initial symptoms were pain and tightness in her neck, right trapezius, and chest wall. She had muscle spasms in her neck and difficulty moving her right arm. She also had a headache on the right side of her head. She saw her family doctor, Dr. Claire Robinson, in the evening on the day of the Accident. Dr. Claire Robinson prescribed an anti-inflammatory, a muscle relaxant, and extra-strength Tylenol. She recommended Ms. Boal stay off work for two weeks.

- [27] On March 31, 2016, Dr. Claire Robinson added a prescription of Gabapentin for nerve pain. Ms. Boal testified this nerve pain was shooting into her hand with pins and needles and there was a deep ache going into her arm pit. She said the pain resulted in loss of strength in her hand causing her to repeatedly drop dishes. She testified these symptoms have not resolved.
- [28] Ms. Boal testified that she struggled with the side effects of Gabapentin, which made her feel like a "Zombie". She noted having difficulty focusing and concentrating, and issues with "word finding". She testified that the side effects were so pronounced that she had to set an alarm at 2:45 p.m. so that her children would not see her passed out on the sofa when they got home from school. On April 28, 2016, Dr. Claire Robinson prescribed Pregabalin as an alternative. Ms. Boal tried the Pregabalin but soon returned to Gabapentin. Her dosage was increased over time.
- [29] In June 2016, Ms. Boal tried another medication, Amitriptyline, in the hope that it would help her sleep. She described it as a "Hail Mary" to help her with what had become chronic headaches.
- [30] On September 26, 2016, Ms. Boal consulted a neurologist, Dr. Kaiway. She underwent nerve conduction studies for the symptoms in her right arm and hand but the results were unremarkable.
- [31] Ms. Boal testified that during the first few months following the Accident she suffered from "lock jaw", which made it difficult to eat and speak. She had difficulty sleeping due to neck and shoulder pain. Her headaches continued and increased in severity. She spent the first few weeks on the sofa. She arranged before and after-school care for Ethan and Nicholas because she could not care for them.
- [32] As mentioned, Ms. Boal had headaches before the Accident but she testified they were very different and not nearly as severe as the headaches she experienced post-Accident. She testified that the headaches she has experienced since the Accident are accompanied by an aura and sensitivity to sound, light, and touch. Sometimes she loses vision in her right eye, seeing only shapes and colours. She testified that sometimes the pain wraps around her right eye and into her jaw. She said the post-Accident headaches leave her unable to function and she is forced to lie down in a dark room. She keeps a gel-filled cap in the freezer and puts it on her head when she has a headache. She also uses a heat pad on her neck and a weighted eye mask. Ms. Boal testified that during the first months following the Accident, she got migraines of this severity as often as five days per week, and they would sometimes run into each other. She testified that she has had migraines that have lasted up to 10 days.

- [33] A few months after the Accident, Dr. Claire Robinson referred Ms. Boal to a physiatrist, Dr. Davidson. Dr. Davidson recommended ultrasound-guided occipital nerve block injections as a treatment for the headaches. Between October 2016 and August 2017, Ms. Boal received five such injections at Lions Gate Hospital. Ms. Boal testified the process was very painful. She said she experienced some relief in her symptoms, but the effect was not long-lasting.
- [34] In May 2017, on the recommendation of Dr. Claire Robinson, Ms. Boal started attending a clinic called ChangePain. She met with specialists, attended several group counselling sessions, and learned about the nature of pain and how to cope with pain. At the clinic she also underwent trigger point injections, chiropractic treatments, and two medial branch nerve block injections in her facet joints. The nerve block injections were not helpful and the process was painful.
- [35] Ms. Boal underwent a Botox treatment for the headaches on October 5, 2017. She said the severity of her migraines was reduced but the effect soon wore off.
- [36] Ms. Boal became pregnant with her son, Jackson, in October 2017. He was born on July 2, 2018. She testified that she stopped taking all medication while she was pregnant and her pain symptoms worsened. Ms. Boal testified that after Jackson was born, she did not return to her medications. She said the side effects (leaving her feeling like a Zombie) outweighed the benefits.
- [37] On August 23, 2018, at the request of her counsel, Ms. Boal underwent an independent medical examination by a neurologist, Dr. Gordon Robinson. She testified that after speaking to him, she thought he might be able to help with her migraines. She asked her family doctor, Dr. Claire Robinson, to refer her back to Dr. Gordon Robinson for a consultation.
- [38] Ms. Boal first saw Dr. Gordon Robinson, in a treating capacity, on April 2, 2019. On her first visit, Dr. Gordon Robinson prescribed Imatrex which she was instructed to take when she felt a migraine starting. She testified that the medication was not effective, and she had chest pain when taking it.
- [39] Ms. Boal saw Dr. Gordon Robinson again on June 11, 2019. He administered a large number of Botox injections into various areas of her head, neck, and shoulders. She testified that these injections gave her significant relief. She returned for additional Botox injections from Dr. Gordon Robinson, initially every 12 weeks, and now every 10 weeks as the effect gradually wears off.
- [40] Ms. Boal testified that her ongoing migraine headaches are triggered by side to side head movement, overhead lights, certain noises, over-use of her right arm, and grocery stores. She is careful to plan her day in advance and limit her activities. For example, if she vacuums, she uses her left hand, and she does not cook dinner on the same day. She said she cannot function without the Botox treatments she receives from Dr. Gordon Robinson. She said that before starting these treatments, she had migraines three to five times a week, with

each typically lasting between 12 and 72 hours. She said that since starting the treatments, the frequency of the headaches has decreased to one or two a week, on average, with each lasting about six hours. She said that after receiving a Botox treatment, there is a buildup period during which she has more frequent headaches, a peak period when the headaches are minimized, and then another buildup as the efficacy of the treatment wears off. She testified that the treatment is at the peak of its efficacy at week six. At about eight weeks, the effects starts to wear off. Dr. Gordon Robinson testified that he does not generally shorten the interval of these treatments beyond 10 weeks.

- [41] In August 2021, Dr. Gordon Robinson prescribed another medication, Tryptan, for the headaches, but Ms. Boal said it was not effective.
- [42] Within a month of the Accident, Ms. Boal started physiotherapy treatments at Moveo Sport & Rehabilitation, where she attended until December 20, 2016. She also had massage therapy treatments there. She returned to physiotherapy from September 9, 2021 to February 8, 2022. She also attended chiropractic treatments from November 15, 2016 to May 4, 2017, and again from September 13, 2017 to February 2, 2018. She underwent two acupuncture treatments in June 2017, which she did not find helpful. In September 2021, she started physiotherapy at a clinic called "Myodetox". She found this helpful, but stopped attending when she exhausted the limit of Mr. Boal's extended health benefits.
- [43] Ms. Boal testified that in the more than six years since the Accident, her ongoing headaches, neck pain, and shoulder pain have caused her to have difficulty sleeping. She testified that it takes her more than an hour to get to sleep and her sleep is interrupted by pain after about three hours. She said that when she wakes up in the middle of the night it is difficult to fall back to sleep and sometimes she is not successful. She said she is often awake between 3:00 a.m. and 6:00 or 7:00 a.m. This leaves her very fatigued and as a result she often naps in the afternoon.
- [44] Ms. Boal testified that while at ChangePain she was advised about the effectiveness of CBD. She began attending a medical cannabis clinic called Greenleaf on June 20, 2019. A physician there has been prescribing CBD for nerve pain and THC for sleep. Ms. Boal testified that the CBD helps to alleviate her migraines and her nerve pain. She testified that she takes the THC oil before bed and it helps her to sleep.
- [45] Ms. Boal testified that since the Accident she has suffered from significant mood symptoms, which are ongoing. She has become irritable. She experiences mood swings, anxiety, and depression. She started seeing a psychologist, Dr. Owen James, on April 17, 2019 for cognitive behavioural therapy. She testified that the COVID-19 pandemic disrupted these sessions. She said she eventually attempted to return to therapy and tried a few virtual sessions because Dr. James had moved to Salt Spring Island, however, she did not find virtual sessions as effective. Her last session with Dr. James was April 12, 2021.

- [46] In addition to cognitive behavioural therapy with Dr. James, Ms. Boal began taking an antidepressant, Cymbalta, in September 2020, which she continues to take daily. She testified that she has since increased her dosage and the medication has helped her to see things more clearly.
- [47] In summary, Ms. Boal testified that she continues to suffer from pain in her neck (right side), right shoulder, and right scapula; tingling in her right arm with numbness in her fourth and fifth right fingers; and excruciating migraine headaches. The neck and shoulder pain is nearly constant. The neurological symptoms are sporadic, occurring multiple times per week. She receives Botox injections every 10 weeks to treat the headaches, the frequency and severity of which follow the pattern described above. She takes CBD oil for pain and THC oil to help her sleep. She takes Cymbalta for depression. She intends to continue to follow Dr. Gordon Robinson's advice and have Botox injections every 10 weeks. She would like to return to ChangePain and she would like to continue counselling, physiotherapy, massage therapy, and chiropractic therapy to the extent recommended by her doctors.

Post-Accident Employment and Activities

- [48] Ms. Boal was off work after the Accident. She exhausted her sick time in May 2016 and then went on short-term disability.
- [49] Ms. Boal attempted a graduated return to work program at ICBC in January 2017. This was encouraged by Dr. Claire Robinson. However, it was Dr. Claire Robinson's view that Ms. Boal was not able to safely work as a driving examiner due to her limited range of motion and impaired concentration. As a result, Ms. Boal started working on reception and then moved to counter work.
- [50] Ms. Boal testified that she was optimistic when she went back to work. She had started the occipital nerve block injections and was experiencing some relief of her headaches as a result. Initially, she worked two four-hour shifts a week, on Monday and Friday afternoons. After about six weeks, she tried to increase her hours, but she was not able to manage this due to her pain. The counter work involved a lot of reaching, grabbing, and moving in to and out of a high stool, which was particularly challenging due to her small stature. She said her neck and shoulder pain increased and the frequency of her headaches increased. She even found it difficult to hold a phone. Dr. Claire Robinson wrote several letters requesting an ergonomic assessment and a change of hours to allow Ms. Boal to work in the mornings, but these requests were not accommodated.
- [51] On May 23, 2017, Ms. Boal was notified by ICBC that the return to work plan was being terminated.
- [52] Eventually, Ms. Boal qualified for long-term disability, but those benefits were terminated in May 2018 when the insurer concluded that Ms. Boal was no longer disabled from all occupations. Ms. Boal then began receiving CPP disability benefits.

- [53] Since the spring of 2021, Ms. Boal has become aware of three job opportunities at ICBC, but after discussing them with ICBC representatives, she concluded that she could not perform all the duties associated with those positions without accommodations. Dr. Claire Robinson again suggested accommodations, but ICBC advised Ms. Boal that the accommodations could not be made.
- [54] Ms. Boal testified that she filed a grievance with her union requesting accommodation from ICBC. She said the grievance is at "level 3", but it will remain in "limbo" until she is able to return to work at ICBC.
- [55] In September 2021, Ms. Boal started working part-time for Meira Consulting, a technology consulting firm owned by Ms. Radford. Again, Ms. Radford has been a close friend of Ms. Boal since they were in high school together. Ms. Radford testified that she created the position, which has the title "business co-ordinator", for Ms. Boal in an effort to enhance her self-esteem and help her get back to work.
- [56] In anticipation of her employment with Meira, Ms. Boal completed an introductory project management course at BCIT. She earned an "A" in the course.
- [57] Ms. Boal completes project-based administrative tasks for Meira that do not have firm deadlines. Most of her work is computer based, such as creating spreadsheets and job postings. The position is highly accommodated and entirely flexible. Ms. Boal sets her own hours and works when she feels able to (usually about 12 hours a week). She is paid \$34 an hour. Most often she works from home. When she goes into the office, she has access to an ergonomic work station, a couch to lay down on, mats and a yoga ball to stretch, and low lighting including light filters in the computer screens. She said she has not been able to increase her hours to even 20 hours a week on a sustained basis. She acknowledged that Ms. Radford has said she is satisfied with her performance.
- [58] Ms. Boal testified that CPP suspended her benefits while she continues to work at Meira. She said she makes about the same amount of money working at Meira as she would receive in CPP benefits, but she chooses to work. She said she enjoys the work.
- [59] Ms. Boal and Mr. Boal were married in August 2016, about five months after the Accident. Ms. Boal testified that her ongoing symptoms prevented her from participating in much of the organizing for the wedding. She said she was in a lot of pain on the wedding day, took all her pain medication by 11:00 am, and recalls little of the day.
- [60] As mentioned, Jackson was born in July 2018. Ms. Boal acknowledged that if she had been working at that time, she would have taken one year of maternity leave.

- [61] Ms. Boal testified that her social life has been dramatically altered as a result of the injuries she sustained in the Accident. As mentioned, she said that before the Accident she and Mr. Boal were very social. They enjoyed golfing, dancing, and spending time with friends. She said that she can no longer golf or dance and she rarely entertains family and friends in her home. She most often relies on take-out food.
- [62] As mentioned, before the Accident, watching Ethan play baseball and being involved with his team was a significant part of Ms. Boal's social life. She went to all his games, helped out on the field, and served as team manager. Since the Accident, she rarely attends games. She no longer helps out on the field or manages the team. She tried joining the board of directors in a lesser role but she gave that up last season.
- [63] Ms. Boal testified that before the Accident she played sports with her family and they enjoyed bike riding. She used to run occasionally. She can no longer participate in any of those activities. She said she cannot hold her head up to ride a bike. She testified that she has attempted Pilates and yoga since the Accident and found them to be beneficial, but she has limited her participation because of the cost.
- [64] Ms. Boal testified that she has gained 25 pounds since the Accident, which she attributes to her much more sedentary lifestyle and the increased consumption of take-out food.
- [65] Ms. Boal testified that she and Mr. Boal enjoyed travelling before the Accident. Since the Accident, Ms. Boal traveled to Arizona once, and she and Mr. Boal went to Whistler for a few nights in 2021. They cancelled trips, including a trip to Mexico, out of concern that Ms. Boal would not be able to handle the travel and would end up unable to leave the hotel room.
- [66] Ms. Boal testified that her injuries have left her unable to perform most household duties. She said that before the Accident she and Mr. Boal assumed fairly traditional roles. She cooked dinner and he cleaned up. Mr. Boal entertained the children while she tidied up the house and did laundry. She said that now Mr. Boal has to do "almost all the things, all the time". She noted that he does the grocery shopping and the laundry, makes lunches for the boys, and does most of the driving. Even with Mr. Boal attending to household tasks, the house has become unkempt. Ms. Boal said she is so embarrassed by the mess she can not invite anyone into her home. She said she has been unable to afford the cost of professional housekeeping assistance.
- [67] Ms. Boal testified that she has had difficulty caring for her children as a result of her condition. She finds doing so to be both physically and emotionally draining. She is a far less active parent and this has been particularly emotionally painful for her. She had difficulty holding Jackson as a baby. She had no similar issues with Ethan, who was born before the Accident. As a baby, Jackson spent a lot of time lying in her bed with her. She breast-fed while lying on her side. Eventually, Mr. Boal put Jackson's mattress on the floor beside their bed so Ms. Boal could slide down and lie next to him to breast feed. She rarely took Jackson out in his stroller because she had difficulty pushing it. She testified she was not able to walk with him during his fussy periods, and her inability to sooth him was emotionally difficult

for her. She bathed him while she was also in the bath.

- [68] Ms. Boal testified that her relationship with her husband has been impacted significantly by her accident-related symptoms. Mr. Boal testified that prior to the Accident, they had a passionate relationship but now their physical intimacy is limited. They both said that life has become very stressful. Mr. Boal is overworked with his additional duties at home and the pressure to work overtime to support the family. Ms. Boal testified that she feels like she is a burden to him.
- [69] Ms. Boal's lay witnesses corroborated her evidence about the changes in her life since the Accident.
- [70] Mr. Boal testified that since the Accident, Ms. Boal has had difficulty being sexually intimate. He said her sleep is often interrupted. He said she rarely does her hair and no longer dresses up. He noted that she is far less involved in parenting the children and that she had a lot of difficulty even holding Jackson when he was a baby. He said they socialize far less frequently. He said he does the vast majority of the housekeeping tasks including laundry, grocery shopping, and making lunches for the children, but he cannot keep up with it and the house is a mess. Mr. Boal testified that when he gets home from work in the late afternoon, Ms. Boal is often asleep, and sometimes is still in her pyjamas.
- [71] Carol Creamore testified that she stops by Ms. Boal's house often and Ms. Boal is on the couch or in bed. She said on several occasions since the Accident she has been worried when Ms. Boal does not answer her phone calls and she has gone to her home to ensure that she has not over-medicated, only to find her sleeping during the day.
- [72] Ms. Creamore testified that Jackson is often on an iPad, which Ms. Boal gives him while she rests. She described Ms. Boal's parenting style with Jackson as involving a lot of sitting activities without a lot of physical play. In contrast, she said Ms. Boal was very actively involved with Ethan when he was a young child.
- [73] Ms. Creamore testified that Ms. Boal is far less social than she used to be. She said Ms. Boal's home is very untidy, noting there is clothing all over the laundry room and clutter on the kitchen counters. She said not long before the trial Ms. Boal wanted to have a bath but the bathtub was too dirty. Ms. Creamore offered to clean it, but Ms. Boal said she did not want her mother to do that. Ms. Creamore testified that there have been occasions since the Accident when Ms. Boal has stayed in her pyjamas for days at a time.
- [74] Ms. Radford testified that she sees Ms. Boal less frequently than she did before the Accident, and now they visit in Ms. Boal's home rather than going out. She said the home is untidy and Ms. Boal now dresses for comfort in leggings and sweatshirts.

- [75] Ms. Nassim Boal testified that Ms. Boal's personality has changed since the Accident. She said her light has dimmed and she has become hard. She does not see Ms. Boal as often as she used to. When she does see her, they just sit around the house. She said Ms. Boal's house is now messy, with piles of clothes on the stairs and clutter on the tables. She said Ms. Boal now wears comfortable clothes which she characterized as a "step back for sure".
- [76] Mr. MacVicar testified that he sees Ms. Boal far less often than he used to see her. He said they no longer attend concerts or sporting events together. He said she seems tired all the time and has become impatient. He said he often takes Ethan to his baseball games and Ms. Boal attends only a "small percentage" of the games. He said Ms. Boal's house is now unkempt, with clothes and dishes lying around.

Expert Medical Evidence

- [77] Ms. Boal relied on the expert evidence of her family doctor, Dr. Claire Robinson; Dr. Heather Underwood, a physiatrist, who conducted assessments of Ms. Boal on August 16, 2018, September 21, 2021, and September 23, 2021; Dr. Anthony Salvian, a vascular surgeon, who conducted an assessment on November 29, 2019; Dr. Gordon Robinson, a neurologist, who conducted assessments on August 23, 2018 and August 23, 2021, and began treating Ms. Boal in 2019; and Dr. Chris Babbage, a psychiatrist, who conducted assessments of Ms. Boal on September 5, 2018 and September 7, 2021. The defence relied on the expert evidence of Dr. Andrew Wolfenden, a neurologist, who assessed Ms. Boal on June 15, 2021; and Dr. Paul Janke, a psychiatrist, who assessed her on August 17, 2021.

Physical Injuries

- [78] There is no material disagreement in the expert medical evidence concerning the nature of Ms. Boal's physical injuries, or their cause. The only disagreement concerns the recommended treatment for her headaches.
- [79] Dr. Claire Robinson initially diagnosed Ms. Boal with chronic myofascial pain syndrome of the right neck, shoulder, and arm; thoracic outlet syndrome; and chronic daily headaches. Later, she added a diagnosis of major depressive disorder with anxious features secondary to an underlying chronic pain disorder. Her prognosis is "guarded", a descriptor she testified she uses interchangeably with "poor" and which means that she does not think Ms. Boal will get better.
- [80] In 2018, Dr. Underwood diagnosed Ms. Boal with myofascial pain in the neck and periscapular region, myogenic thoracic outlet syndrome, irritation of the jaw, and headaches attributed to injury to the neck. She opined that the Accident was the cause of these symptoms. She noted that Ms. Boal's primary difficulty was with the headaches and expressed the view that she might benefit from a "full botulism protocol" and trials of a variety of other medications. She expressed the view that Ms. Boal was disabled from working but that after "completing recommendations" she would be capable of returning to

work in an occupation permitting positional changes, and noted that intermittent stretching and an ergonomic work environment would be beneficial.

- [81] Following her subsequent assessments in 2021, Dr. Underwood again diagnosed myofascial pain in the neck and periscapular region, thoracic outlet syndrome, and headaches attributed to trauma to the neck. She also diagnosed chronic pain involving the right shoulder and noted some improvement in the thoracic outlet syndrome. She expressed a less optimistic view about Ms. Boal's ability to work. In this regard, she opined that Ms. Boal "is partially disabled from work", is unable to work as "a driving instructor", and is unable to work full time, particularly without ergonomic accommodation. She expressed the view that working part time, from home, with a proper ergonomic set up and the ability to take frequent breaks would be beneficial.
- [82] Dr. Underwood made several recommendations including physiotherapy for development of a maintenance program and for symptom exacerbations; medications; ongoing Botox injections; housekeeping assistance; assistance with haircare; and exercise. She testified on cross-examination that Ms. Boal should participate in whatever passive therapies help her manage her symptoms, while acknowledging these are not curative.
- [83] Dr. Salvian diagnosed Ms. Boal with chronic myofascial pain syndrome due to injury of the muscles and ligaments in the right upper back and neck, as well as traumatic thoracic outlet syndrome with soft tissue irritation of the lower nerves of the brachial plexus. He noted the ongoing headaches. He did not consider Ms. Boal to be a candidate for surgery for the thoracic outlet syndrome. He recommended referral to a rehabilitation medicine expert, a home exercise program, good ergonomics, behaviour modification (taking frequent breaks, avoiding prolonged static positions), housekeeping assistance, maintaining fitness through use of a gym and/or pool following sessions with a personal trainer or kinesiologist, treatment to improve posture, and passive therapies and pain medication as required.
- [84] In Dr. Salvian's opinion, Ms. Boal has significant vocational limitations. He recommended a functional capacity assessment and a vocational assessment.
- [85] Dr. Salvian's prognosis for the myofascial pain symptoms is that they will wax and wane depending on activities but that Ms. Boal will never be pain free. His prognosis for the thoracic outlet syndrome was not optimistic. He opined that it will not resolve but Ms. Boal "may be able to cope and have a reasonable quality of life if [she] follow[s] the behaviour modifications outlined". On the other hand, if "forced into repetitive activities, i.e. heavy lifting, typing, driving, overhead use of the arm or if forced to work on an ongoing relentless basis without breaks and full time", she will fail, the neuralgic pain will become significantly worse, and eventually she will not be able to cope. He noted that Ms. Boal remains at risk of exacerbating her symptoms should she have further muscle spasm which could occur with additional trauma but may also occur with prolonged driving, typing, or sleeping in the wrong position.

- [86] Dr. Gordon Robinson, who began treating Ms. Boal's headaches in April 2019, expressed the opinion that she sustained soft tissue injuries to her neck, right shoulder, and upper back in the Accident. He diagnosed persistent post-traumatic headaches related to those injuries. He noted substantial improvement in the frequency and severity of the headaches since Ms. Boal began Botox therapy in June 2019, with the treatments being repeated every three months. He characterized Ms. Boal's severe headaches as reduced from two to three per week to every one to two weeks "once the Botox has become active".
- [87] Dr. Gordon Robinson opined that Ms. Boal's headaches will continue to respond to Botox treatment indefinitely, although the response is temporary and the treatment must be repeated on a regular basis. Dr. Robinson's view is that Ms. Boal's current condition (as of his report dated August 26, 2021) "will probably persist indefinitely", and "[h]er prognosis to return to work is guarded and her challenges in managing her home life will probably continue".
- [88] Dr. Wolfenden's diagnosis of Ms. Boal and opinion on causation was similar to that of Ms. Boal's medical experts. In his view, the Accident caused a spinal strain injury; persistent headaches attributed to whiplash; exacerbation of pre-existing migraines; and post-traumatic thoracic outlet syndrome. Dr. Wolfenden expressed the opinion that Ms. Boal is partially disabled with respect to work, domestic chores, and leisure activities, and that ongoing partial disability "is reasonable". He agreed that Ms. Boal is capable of "sedentary to light physical activity on a part-time basis with accommodation".
- [89] Dr. Wolfenden's prognosis is cautious at best. In his opinion, Ms. Boal is "likely destined to experience pain over the long-term". He noted that psychological dysfunction is a significant risk factor for persistent pain, and persistent pain can worsen or perpetuate psychological disfunction. According to him, there is no evidence to indicate Botox injections would be efficacious in treating Ms. Boal's headaches. However, he expressed optimism that she would benefit from nerve block injections in the facet joints in the upper cervical region and, if those provided temporary pain relief, he said she should consider rhizotomy (a procedure in which the innervation to the facet joint is destroyed). In his opinion, if she responded favourably, she "would likely be able to increase the number of hours worked although the magnitude is not possible to predict". He also recommended that Ms. Boal try some triptan medications to alleviate her symptoms.
- [90] Dr. Gordon Robinson responded to Dr. Wolfenden's report. He acknowledged that there have been no randomized clinical trials assessing the use of Botox for headaches related to whiplash injury, but he noted that it has been used "off label" for treating chronic migraines for years. According to him, there is widespread use of Botox in the treatment of post-traumatic headache. He has used Botox in his practice since 2003. He said he has "no doubt" that it has been helpful for a substantial number of his patients with post-traumatic headache and he emphasized that Ms. Boal has responded very well to the Botox treatments he has administered. In his response report he estimated that the decrease in her severe headaches is probably over 50 percent, and at trial he agreed it was over 50 percent and

closer to a 70 to 80 percent reduction. In commenting on Dr. Wolfenden's recommendations for facet joint injections and rhizotomy, he noted that Ms. Boal has already had facet joint injections without any decrease in her pain and, as a result, he was not in favour of revisiting that treatment. He agreed that Ms. Boal should try additional triptan medications.

- [91] Both Dr. Gordon Robinson and Dr. Wolfenden were of the view that passive therapies such as massage, physiotherapy, and chiropractic therapy are not likely to result in a resolution of Ms. Boal's symptoms. However, Dr. Robinson indicated passive therapies can assist with symptom management and expressed the view that their efficacy must be assessed on the basis of an individual cost/benefit analysis. Dr. Wolfenden recommended active exercise, stretching, and strengthening under the occasional supervision of a physiotherapist or chiropractor for the spinal strain.

Psychological Symptoms

- [92] There was no material disagreement between the psychiatric experts' diagnoses and views on causation. Again, the difference is relatively minor and concerns Ms. Boal's prognosis.
- [93] Dr. Babbage initially diagnosed Ms. Boyle with somatic symptom disorder with pain as the predominant focus, along with anxiety and mood symptoms arising from her pain, and chronic adjustment disorder which put her at risk of developing major depressive disorder. Following his second assessment of Ms. Boyle in September 2021, Dr. Babbage maintained his diagnosis of somatic symptom disorder and also expressed the view that Ms. Boyle then met the criteria for persistent depressive disorder. Dr. Babbage explained the nature of somatic symptom disorder. In brief, it is a psychiatric condition characterized by an extreme focus on persistent pain and other physical symptoms that causes significant distress and disruption of functioning, and is resistant to treatment.
- [94] The defence psychiatric expert, Dr. Janke, agreed with Dr. Babbage's diagnosis of somatic symptom disorder and he agreed that Ms. Boal had developed major depressive disorder by the fall of 2020. He considered that the major depressive disorder had responded partially to treatment with Cymbalta.
- [95] The psychiatric experts differed to some extent on the likelihood of future improvement in Ms. Boal's psychiatric symptoms. It is Dr. Babbage's opinion that material improvement in her psychiatric symptoms is unlikely and that they have left her permanently partially disabled. Dr. Janke is more optimistic. In particular, although Ms. Boal has had some psychological counselling with Dr. Owens, Dr. Janke recommended more rigorous cognitive behavioural therapy and active rehabilitation. In his opinion, that would result in "significant improvement" in Ms. Boal's functioning. Dr. Babbage agrees that cognitive behavioural therapy could help with stress management but, in his view, it will not be effective in treating the somatic symptom disorder or result in significant improvement in functioning. Both Dr. Babbage and Dr. Janke were of the view that Ms. Boal should be referred to a treating psychiatrist for ongoing management of medications. In particular, Dr.

Babbage recommended that her duloxetine (Cymbalta) dose be increased.

- [96] Again, the only real difference between the evidence of Dr. Babbage and that of Dr. Janke was the degree to which they thought Ms. Boal's psychiatric conditions will improve with treatment. Dr. Babbage believes that cognitive behavioral therapy, ongoing medication management for the depression, and active rehabilitation will help Ms. Boal maintain her current function and may result in an improvement or remission of the depression, but that the somatic symptom disorder is unlikely to respond. Dr. Janke believes there is some prospect of improvement with these treatments, even in the somatic symptom disorder, particularly if her headaches continue to respond to Botox.

Other Expert Evidence

- [97] In addition to the medical evidence summarized above, Ms. Boal relied on the expert evidence of Mr. John Lawless, a vocational consultant; Dr. Tracy Witty, an occupational therapist; Ms. Louise Craig, a functional capacity evaluator; and Mr. Darren Benning, an economist. The defence relied on the expert evidence of Dr. Colleen Quee-Newell, a vocational consultant; Ms. Claudia Walker, an occupational therapist; and Mr. Mark Szekely, an economist.
- [98] Mr. Lawless conducted two assessments of Ms. Boal's ability to competitively access the labour market. The first assessment was conducted in November 2018 and the second in January 2022. The opinions he formed following the first assessment did not change materially following the second. He opined that Ms. Boal was, and remains, unsuited for all her past positions at ICBC as well as more senior positions there to which she previously aspired. In his view, she is now limited to entry-level clerical occupations in positions that are highly accommodated with sympathetic employers. These opinions were based, in large part, on the opinions of medical and other experts about Ms. Boal's capacity for work and Mr. Lawless' own vocational testing. He characterized the accommodations Ms. Boal is receiving from Meira as extraordinary.
- [99] Dr. Quee-Newell did not conduct an assessment of Ms. Boal. She prepared a report that responded to Mr. Lawless' reports. Among other things, she was critical of the work history Mr. Lawless took from Ms. Boal, which she characterized as "overly general"; his failure to administer effort measures in his vocational testing of Ms. Boal; his use of a dated test for assessing her non-verbal intellectual function; his use of what she characterised as overly general and out of date earnings data; his assessment that part-time work in sedentary positions is rare; an incorrect occupational classification; his use of dated workforce participation data; his use of an inappropriate test to predict success in certain careers; and the absence of support for his conclusion that Ms. Boal is extraordinarily accommodated at Meira.

- [100] Ms. Craig conducted functional capacity evaluations of Ms. Boal on October 25, 2018 and August 24, 2021. After the 2018 assessment, she concluded that Ms. Boal did not demonstrate the capacity to meet the physical demands of a driving examiner; that she did not demonstrate the capacity to work in the clerical position to which she was assigned during her attempted graduated return to work; and that she was limited to part-time hours in occupations with light physical demands and accommodations allowing for frequent positional and task changes, regular stretching, and proper ergonomics. Ms. Craig's conclusions did not change in any material way following the 2021 assessment. Ms. Craig recommended a vocational assessment and counselling to assist Ms. Boal identify positions that may be compatible with her current physical abilities. She also recommended occasional physiotherapy or massage therapy for symptom management, an exercise program and Pilates, household cleaning assistance, and assistance with heavier and seasonal household tasks.
- [101] Dr. Witty conducted an occupational therapy assessment of Ms. Boal at her home on November 29, 2018. On September 8, 2021, she conducted a phone interview of Ms. Boal focussing on changes since the 2018 assessment. She made several recommendations for Ms. Boal's future care needs and provided costing for a variety of future care recommendations and several of Ms. Boal's current treatments (such as medications and Botox injections).
- [102] Ms. Walker did not conduct an assessment of Ms. Boal. She prepared two reports responding to Dr. Witty's reports. In her reports, she critiqued certain aspects of Dr. Witty's methodology and some aspects of her future care recommendations.
- [103] Mr. Benning prepared a report providing estimates of Ms. Boal's past and future loss of employment income and future cost of care, explaining the use of future income loss multipliers to express the present value of a future income stream, and explaining the use of future cost of care multipliers to express the present value of a future cost of care expenditure stream. The portion of Mr. Benning's report pertaining to income loss reflected labour market contingencies applicable to males (such as non-participation in the labour force) as well as premature death.
- [104] Mr. Szekely provided a report that commented on an earlier report of Mr. Benning and provided some alternative calculations. Among other things, he expressed the view that Mr. Benning's use of labour market data for males as opposed to females would be expected to overstate the average future earnings of females.

Discussion

Credibility

[105] The defence challenged Ms. Boal's credibility, submitting that she demonstrated instances of overstatement in relation to her education, professional experience, and response to the collision.

[106] The plaintiff's credibility is always important in a personal injury case involving subjective symptoms such as those upon which Ms. Boal's case is based. The Court must be very careful when assessing a plaintiff's credibility "when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery": *Price v. Kostyba* (1982), 70 B.C.L.R. 397 at 399, 1982 CanLII 36 (S.C.).

[107] The proper approach to assessing an interested witness's testimony was articulated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions .

[108] The factors identified by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, play a role in assessing whether the evidence of a witness is truthful and accurate. These factors include the ability of the witness to resist being influenced by his or her interest in recalling the relevant events; the internal and external consistency of the witness's evidence; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether his or her evidence seems unreasonable, improbable, or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way he or she presents while testifying.

[109] In my view, the credibility concerns noted by the defence were overstated. Ms. Boal did exaggerate her qualifications in her application for the "program lead" position in the Wellness Department, shortly before the Accident. However, considered in context and in light of the evidence to the effect that ICBC would waive formal requirements for internal candidates, this did not cause me to conclude that her evidence was influenced by her financial interest in the case. Somewhat more troubling was her resistance to acknowledging the exaggeration when challenged on it during the trial, but when considered in the context of all her evidence, I put this down to embarrassment and it left me with no concerns.

[110] Overall, Ms. Boal's testimony was consistent and reasonable, and I accept it.

- [111] The defence submitted that Mr. Boal's evidence was unreliable because he demonstrated difficulty recalling details such as dates and because he was prone to overstatement.
- [112] In my view, Mr. Boal did not exaggerate in his testimony. At times he was effusive, but my impression was that he was attempting to honestly convey his observations. He did demonstrate a significant difficulty recalling details such as dates, but the significance of his testimony depended very little if at all on such matters. I had no difficulty accepting the substance of his evidence.

Contributory Negligence

- [113] As mentioned, liability has been admitted, but the defendants allege that Ms. Boal was contributorily negligent. Specifically, the defendants submit that Ms. Boal should have intervened sooner when she realized Ms. Parilla was overturning onto Madison Avenue or, alternatively, she should have terminated the road test after the first overturning incident and called the ICBC office to be picked up.
- [114] Ms. Boal's position is that the claim for contributory negligence should be dismissed because it was not adequately pleaded. Alternatively, she submits that the evidence falls far short of establishing that Ms. Boal did anything that fell below the standard of care in the circumstances.
- [115] The defendants pleaded contributory negligence in very general, essentially boilerplate, terms. The Response to Civil Claim provides, in material part:

Part 1, Division 3, Additional Facts

7. In response to the whole of the Notice of Civil Claim, the Defendants say that if the Plaintiff suffered any injury, loss, damage, or expense as alleged in the Notice of Civil Claim, or at all, which is not admitted but is specifically denied, then such injury, loss, damage, or expense could have been prevented or the severity thereof reduced, if the Plaintiff had not been negligent in respect of her own personal safety, particulars of which include, but are not limited to, the following:
- (a) not wearing and having properly adjusted and securely fastened the complete seatbelt assembly installed in the motor vehicle in which the Plaintiff was a passenger, contrary to the provisions of s. 220(4) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 and amendments thereto; and
 - (b) Failing to properly adjust the headrest provided so as to provide sufficient support to a person of the Plaintiff's height and stature.

Part 3, Legal Basis:

1. The Defendants say that if the Plaintiff suffered any injury, loss, damage, or expense as alleged in the Notice of Civil Claim, or at all, all of which is not admitted but is specifically denied, then such injury, loss, damage, or expense could have been prevented or the severity thereof reduced, if the Plaintiff had not been negligent with respect to her own personal safety, and the Defendants plead the provisions of the Negligence Act, R.S.B.C. 1996, c. 333 and amendments thereto.
- [116] In my view, this pleading did not give fair notice to Ms. Boal of the contributory negligence case she had to meet. She would not reasonably have anticipated the unusual nature of the alleged negligence from this pleading.
- [117] The defence points out that particulars of the alleged negligence were set out in the defence trial brief. However, the same trial brief indicated that the defendants intended to seek an order to amend the Response to Civil Claim to add these particulars and they never made such application. Ms. Boal submits that allowing the defence to pursue the contributory negligence claim in these circumstances would prejudice her because, if an order to amend was sought and granted, she may have marshalled evidence relevant to the applicable standard of care.
- [118] I agree with Ms. Boal's submission. I would dismiss the contributory negligence claim on the ground that it was not adequately pleaded. However, even if the contributory negligence pleading was adequate, I would still dismiss the claim on the merits because the defence has not established that Ms. Boal's conduct fell below the standard of care.
- [119] The only evidence at all relevant to the standard of care expected of a driving examiner was that of Ms. Boal. She testified that her conduct throughout Ms. Parilla's road test was consistent with ICBC policy. In particular, she explained that terminating the test and driving Mr. Lagman's vehicle back to the office, herself, would have been inconsistent with ICBC policy.
- [120] In any event, nothing in the evidence of Ms. Boal or Ms. Parilla would support the conclusion that Ms. Boal could have intervened sooner when she realized that Ms. Parilla was about to overturn onto Madison Avenue. Similarly, nothing in the evidence of Ms. Boal or Ms. Parilla would support the conclusion that Ms. Parilla's driving was so poor in the period before the Accident that a reasonable person, or a reasonable driving examiner, would have terminated the test after the first overturning incident and called the ICBC office to be picked up.

Findings on the Plaintiff's Condition and Causation

- [121] As already noted, the defence concedes that the injuries Ms. Boal complains of were caused by the Accident. As noted in the defendants' final argument, Dr. Gordon Robinson opined that a person who is turned during an accident is more likely to get a one-sided injury, and Dr. Underwood opined that grabbing the steering wheel would be sufficient to cause injury to the musculature surrounding the neck and periscapular region. The only disagreements

concern the future treatment options for Ms. Boal's headaches and the prognosis for improvement. Ms. Boal submits that the evidence demonstrates that the best she can expect is to maintain her current condition, whereas the defence submits that her recovery has not plateaued, and with further treatment her symptoms are likely to improve and her function is likely to increase correspondingly.

[122] I accept Ms. Boal's account of the nature, severity, and progression of her symptoms, and the impact they have on her functionality and enjoyment of life. On the evidence as a whole, including the largely consistent expert medical evidence, I find that:

- Ms. Boal sustained soft tissue (myofascial) injuries to her neck and right periscapular region in the Accident;
- these injuries have left her with chronic myofascial pain in her neck, right shoulder, and right arm; post-traumatic thoracic outlet syndrome causing neurological symptoms in her right arm and fingers; chronic headaches attributed to the neck injury; irritation of her jaw; somatic symptom disorder; and chronic adjustment disorder that led to major depressive disorder;
- she continues to suffer from pain in her neck, right shoulder, and arm on a daily basis; tingling in her right arm and numbness in her fourth and fifth fingers several times a week; and, with her current Botox regime, one to two severe headaches per week;
- the psychological conditions have left her suffering from distress, anxiety, and depressive symptoms;
- the ongoing symptoms have impaired the quality of her sleep and her functionality; and
- the depressive symptoms have responded to medication, but the distress and anxiety associated with the somatic symptom disorder continue to impair her functionality.

[123] As mentioned, the areas of dispute concern future treatment options for Ms. Boal's headaches and the likelihood of improvement in her condition.

[124] Leaving the headaches aside for the moment, the medical evidence as a whole establishes that there is little if any prospect of improvement in Ms. Boal's physical symptoms. The myofascial pain and the neurological symptoms will wax and wane, but Ms. Boal will never be pain free.

[125] Turning to the headaches, I prefer Dr. Gordon Robinson's opinion about the efficacy of Botox over that of Dr. Wolfenden because Dr. Gordon Robinson has significantly more clinical experience treating headaches and, as Ms. Boal's treating physician, he has seen, firsthand, the improvement in her headaches since commencing the Botox regime. Dr. Gordon Robinson testified that the response to Botox tends to remain robust over time and he expressed the view that Ms. Boal is likely to continue to respond to the Botox regime.

- [126] I also prefer Dr. Gordon Robinson's opinion over that of Dr. Wolfenden on the efficacy of nerve block injections/rhizotomy treatment because Dr. Wolfenden did not mention in his report that Ms. Boal had already tried facet joint injections without benefit. On the basis of Dr. Gordon Robinson's evidence, I find that additional nerve block injections/rhizotomy treatment is not likely to lead to any improvement in Ms. Boal's headaches. However, both Dr. Gordon Robinson and Dr. Wolfenden recommended additional trials of triptan medications, from which I infer that both of them believe that there is a reasonable prospect of some improvement in the headaches with triptan medications. In the result, I find that if Ms. Boal continues with the Botox regime, the headaches are likely to persist at their current level and frequency, and there is some prospect of improvement with triptan medications.
- [127] I move now to the prognosis for improvement in Ms. Boal's psychological conditions. Both Dr. Babbage and Dr. Janke recommend cognitive behavioural therapy, ongoing medication management for the depression, and active rehabilitation. Dr. Babbage believes that these treatments will help Ms. Boal maintain her current function and may result in an improvement or remission of the depression, but that the somatic symptom disorder is unlikely to respond. Dr. Janke believes there is some prospect of improvement even in the somatic symptom disorder, particularly if her headaches continue to respond to treatment.
- [128] After careful review of the reports of Dr. Babbage and Dr. Janke and their testimony at trial, I conclude that there is little material difference in their prognoses. Both of them agreed in cross-examination that somatic symptom disorder is likely chronic and the recommended treatments are not curative. Dr. Janke explained that the goal of cognitive behavioural therapy is to improve function and there is some prospect of improvement in Ms. Boal's function, particularly if her headaches continue to respond to treatment. Dr. Babbage expressed the view that the goal of cognitive behavioural therapy is to assist the patient live with the somatic symptoms that persist. He did not comment on whether his prognosis for the somatic symptom disorder would be more optimistic if Ms. Boal's physical symptoms improved.
- [129] Taking all of the expert medical evidence into consideration, I find that with cognitive behavioural therapy, ongoing medication management for depression, and active rehabilitation, Ms. Boal's symptoms of depression will improve, it is likely that the anxiety and distress associated with the somatic symptom disorder will be managed at current levels, there is a high probability that she will retain her current functionality (not worsen), and there is a reasonable prospect of modest improvement in her function because there is some prospect of improvement in her headaches.

Non-Pecuniary Damages

- [130] An award of non-pecuniary damages is intended to compensate for pain, suffering, and loss of enjoyment of life prior to the trial and into the future. In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, leave to appeal ref'd [2006] S.C.C.A. No. 100, the Court of Appeal set out a non-

exhaustive list of factors to be considered in determining the amount of non-pecuniary damages to award. That list includes the age of the plaintiff, the nature of the injury, the severity and duration of the pain, the extent of disability, the existence of emotional suffering, the loss or impairment of life, the impairment of relationships, the impairment of physical and mental abilities, and the loss of lifestyle. I have taken these factors into consideration.

- [131] Awards of non-pecuniary damages in other cases provide a useful guide, however, the specific circumstances of each individual plaintiff must be considered. This is because any award of damages is intended to compensate for the pain and suffering experienced by a specific individual.
- [132] There is no doubt that Ms. Boal's injuries have had a substantial impact on her lifestyle and enjoyment of life. Again, I found her to be a credible witness and I accept her account of the nature, severity, and progression of her symptoms, and the impact they have on her functionality and enjoyment of life. I also accept the evidence of her lay witnesses about the changes in her personality, activities, and lifestyle after the Accident.
- [133] Before the Accident, Ms. Boal was a happy person who lived a very active, social, and largely pain-free life. She was the life of the party and enjoyed entertaining in her home. She was a passionate partner to her husband and an involved mother. She took great pride in her appearance and in her home. She had a rewarding career as a driving examiner with ICBC and, as discussed in more detail later, a realistic ambition to move into a higher-level position in ICBC's Wellness Department.
- [134] For more than six years, Ms. Boal has endured daily pain in her neck, right shoulder, and right arm, and near daily neurological symptoms in her arm and fingers. She suffered from near constant, excruciating, and completely debilitating headaches for about seven months, until October 2016, when she underwent the first of several occipital nerve injections which provided some temporary periods of relief for about 10 months. She then underwent trigger point injections, followed by two unsuccessful medial branch block injections. She continued to suffer with severe headaches three to five times a week until June 2019 (more than three years post-Accident) when Dr. Gordon Robinson began treating her with Botox. Since then she has been receiving ongoing Botox injections, initially every 12 weeks and now every 10 weeks. Since starting the treatments, the frequency of the headaches has decreased to one or two a week. After receiving a Botox treatment, there is a build up period during which she has more frequent headaches, a peak period at about week six when the headaches are minimized, and then another build up as the efficacy of the treatment wears off. She has been left sleep deprived and with chronic distress, anxiety, and depressive symptoms.
- [135] Ms. Boal's pain and neurologic symptoms are very likely permanent. If she continues with the Botox regime, the headaches are likely to persist at their current level and frequency, but there is some prospect of additional improvement with triptan medications. With

cognitive behavioural therapy, ongoing medication for depression, and active rehabilitation, Ms. Boal's symptoms of depression will improve, it is likely that the anxiety and distress associated with the somatic symptom disorder will be managed at current levels, there is a high probability that she will retain her current functionality, and there is a reasonable prospect of modest improvement in her function because there is some prospect of improvement in her headaches. She is still a relatively young woman and she faces a lifetime of ongoing pain, headaches, and mood symptoms.

- [136] Ms. Boal has had to endure a series of painful treatments and medications that cause side effects. She has had to devote time to rehabilitation and counselling. She faces a future of ongoing treatments, medication, rehabilitation, and counselling.
- [137] The Accident-caused injuries have had a devastating effect on all aspects of Ms. Boal's life. Her personality has changed. She is irritable and moody, and has lost her self-confident nature. As Nassim Boal put it, her light has dimmed. She is a shadow of her former dynamic, outgoing self. Her appearance has suffered. She has gained 25 pounds, no longer dresses up, and most often does not do her hair. She is significantly functionally disabled. She can no longer engage in the physical activities she used to enjoy with her husband and sons. There has been a dramatic change in her social life. She goes out far less often than she used to. She rarely entertains and is embarrassed by the unkempt state of her home. All of her personal relationships have been impaired. Her relationship with her husband has been affected and she now feels like a burden to him. She is not the upbeat, outgoing, lively, fun wife, mother, daughter, sister, and friend that she used to be. The changes in her parenting abilities have been particularly devastating to her.
- [138] The ongoing physical and psychological symptoms, and the changes in Ms. Boal's personality and lifestyle, have taken a significant emotional toll. She has endured much emotional suffering.
- [139] Ms. Boal seeks an award of \$225,000 for non-pecuniary damages. I considered the following cases cited by her counsel: *Grabovac v. Fazio*, 2021 BCSC 2362 (\$350,000 awarded in non-pecuniary damages); *Fletcher v. Biu*, 2020 BCSC 1304 (\$200,000 awarded in non-pecuniary damages, or about \$220,000 when adjusted for inflation); *Gill v. Apeldoorn*, 2019 BCSC 798 (\$200,000 awarded in non-pecuniary damages, or about \$220,000 when adjusted for inflation); and *Moges v. Sanderson*, 2020 BCSC 1511 (\$200,000 awarded in non-pecuniary damages, or about \$220,000 when adjusted for inflation).
- [140] The defence submits that an award of between \$80,000 and \$90,000 is more appropriate, citing the following cases: *Leung v. Draper*, 2020 BCSC 219 (\$90,000 awarded in non-pecuniary damages); *Grimm v. Young*, 2019 BCSC 1549 (\$90,000 awarded in non-pecuniary damages); *Matheos v. Scott*, 2019 BCSC 1738 (\$80,000 awarded in non-pecuniary damages); and *Hauk v. Shatzko*, 2020 BCSC 344 (\$150,000 awarded in non-pecuniary damages).

- [141] All the cases cited by counsel concern plaintiffs who, in general terms, sustained physical injuries similar in nature to those sustained by Ms. Boal. The most significant differences are the presence or absence of psychological symptoms and diagnoses, and the impact of the ongoing symptoms on the plaintiff's functionality and enjoyment of life.
- [142] With one exception, I do not consider the cases relied on by the defence to be reflective of the severity of Ms. Boal's injuries and the effect they have had on her life. In *Leung*, the plaintiff suffered from ongoing post-traumatic headaches but they were treated with ibuprofen and, on my reading of the case, they were not nearly as debilitating as are Ms. Boal's headaches. In addition, the plaintiff's somatic symptom disorder was found to be mild and her prognosis was more optimistic than is Ms. Boal's prognosis. *Grimm* and *Matheos* concerned plaintiffs whose physical injuries were similar to Ms. Boal's physical injuries but in neither case was any psychological condition diagnosed. The exception is *Hauk*. However, from my reading of that case, it appears that the plaintiff's headaches were not completely debilitating, as are Ms. Boal's headaches.
- [143] With one exception, Ms. Boal's cases involved injuries that had a similarly profound impact on virtually all aspects of the plaintiff's life. The exception was *Grabovac*. As noted by Ms. Boal's counsel, the plaintiff in *Grabovac* was left with no real prospect of having children and this was a significant factor in the quantification of the non-pecuniary award. The cases I found most helpful as comparators were *Fletcher*, *Gill*, and *Moges*, which concerned plaintiffs with similar injuries and symptoms that affected virtually all aspects of their lives.
- [144] The most significant factors in this case are Ms. Boal's relatively young age; the severity and constancy of her ongoing symptoms; the near certainty that she faces many years of ongoing debilitating pain and suffering; the fact that her prognosis for improvement is guarded with a best case scenario of modest improvement in the headaches which, if it transpires, would modestly improve her ability to function; the profound impact her injuries have had on every aspect of her life, including the impairment of all her personal relationships; and the severe emotional suffering she has endured. Having considered all the authorities, I assess Ms. Boal's non-pecuniary damages at \$220,000.

Past Loss of Income

- [145] A claim for past loss of income or income earning capacity is based on the value of the work the injured plaintiff would have performed but was unable to perform because of their injury: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.
- [146] A common method of assessing this value is to project the income the plaintiff would have earned in the period between the injury and the trial had the injury not occurred, taking into account all realistic contingencies, and to award the difference between the projected income and the actual income the plaintiff did earn or was capable of earning during that period.

- [147] Projecting what a plaintiff would have earned in the past had they not been injured is a hypothetical exercise. While the standard of proof relating to actual past events is a balance of probabilities, a hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Grewal v. Naumann*, 2017 BCCA 158 at para. 48. Real and substantial possibilities are given weight according to their relative likelihood: *Reilly v. Lynn*, 2003 BCCA 49 at para. 101.
- [148] I start then by projecting the income Ms. Boal would have earned in the period between the Accident and the trial had the Accident not occurred, taking into account all realistic contingencies.
- [149] As noted, at the time of the Accident Ms. Boal was working for ICBC as a driving examiner at an annual salary of \$54,716 (according to the collective agreement). She had worked full time for ICBC since 2007, except during maternity leave.
- [150] Ms. Boal applied for a "program lead" position in the Wellness Department shortly before the Accident. The job posting indicated that it paid between \$70,000 and \$87,000 per year. There was no evidence from any representative of ICBC who was involved in assessing the applications for that position addressing whether Ms. Boal would have been a competitive candidate. She clearly did not meet the posted requirements which included a Bachelor's degree in a health-related field. However, there was evidence from Ms. Boal, Mr. Boal, and Nassim Boal to the effect that ICBC sometimes waives posted pre-requisites to hire an internal candidate. For example, Nassim Boal testified that her husband was recently successful, as an internal candidate, in obtaining a managerial position with ICBC, paying more than \$100,000 per year, although he does not have a university degree. Mr. Boal has been considered for management positions, and has served as acting manager, even though he does not have a post-secondary education. He noted two ICBC employees recently hired into management positions who have only high school education.
- [151] Ms. Boal testified that staying at home is not in her nature and she would have continued to pursue a better paying position in the Wellness Department or as a manager with ICBC had the Accident not occurred. She testified that she intended to continue working full time at ICBC until retirement at age 65 or 70. She testified that she believed that there was an option to retire at age 55 and then to contract back to ICBC while receiving her full pension. She testified she would have done this if it was an option at the time. She testified that if she was unable to contract back after early retirement, then she would have stayed in her position until age 65 or 70.
- [152] I accept Ms. Boal's evidence about her career plans and aspirations at the time of the Accident. I find that had the Accident not occurred, she would have continued working at ICBC as a driving examiner and she would have attempted to secure an internal transfer into a better paying position in the Wellness Department or as a manager. She has a strong attachment to the work force. She is clearly intelligent. By all accounts, she was an energetic and diligent employee before the Accident. She has demonstrated a degree of

ambition. By the time of the Accident, she had already succeeded in securing a promotion at ICBC from the CSR position to the driving examiner position, and after the Accident she completed the program management course, achieving high marks, in preparation for her current position at Meira. In the circumstances, I am satisfied that there is a real and substantial possibility, indeed a significant possibility, that but for the Accident, she would have eventually succeeded in moving up within ICBC. It is more difficult to predict how far Ms. Boal would have moved within ICBC and the timing of any promotions she would have secured. Nevertheless, I am satisfied that this is a contingency that must be reflected in the assessment of her damages.

- [153] Using the collective agreement governing Ms. Boal's position at ICBC at the time of the Accident, Mr. Benning estimated the income Ms. Boal would have earned from January 1, 2016 to the first day of trial in May 2022 if the Accident had not occurred at \$323,007, after a deduction of about 15.9 percent for income taxes, pension premiums, and union dues. This amount includes both salary and non-wage benefits. Mr. Benning's estimate was based on the assumptions that Ms. Boal would have remained in the driving examiner position throughout the period and that she would have taken a one-year maternity leave between May 2018 and April 2019, after Jackson's birth.
- [154] Mr. Benning's estimate included a full year of income in 2016. According to Ms. Boal's 2016 tax return, she earned gross income of \$20,216 in 2016, before the Accident. What she actually earned (after the same 15.9 percent deduction for income taxes, pension premiums, and union dues) would have to be subtracted from Mr. Benning's estimate to reflect only the period from the Accident to the trial. That would reduce Mr. Benning's estimate to \$306,005 (\$323,007 - (\$20,216 - 15.9 percent)).
- [155] I turn now to the income Ms. Boal earned during the period between the Accident and the trial.
- [156] Ms. Boal did not return to work at ICBC following the Accident until January 2017 when she attempted the graduated return to work program. As noted, this was not successful and ICBC ended the attempt in May 2017. She did not work again until September 2021, when her job at Meira commenced. According to Ms. Boal's tax returns and her testimony about the hours she worked at Meira, she earned employment income of \$31,727 in the period between the Accident and the trial. Mr. Benning estimated Ms. Boal's with-Accident income in the period to the trial at \$53,089, but that amount included her 2016 pre-Accident income and an assumption about her income from Meira. I am satisfied that the \$31,727 derived from the evidence is a more accurate reflection of Ms. Boal's actual income in the period between the Accident and the trial.
- [157] If I assume for the moment that Mr. Benning's adjusted estimate is an accurate projection of the amount Ms. Boal would have earned in the period between the Accident and the trial had the Accident not occurred, then Ms. Boal's past loss of income or income earning capacity would be assessed at \$274,278 (\$306,005 - \$31,727). However, as mentioned, Mr.

Benning assumed that Ms. Boal would have remained in the driving examiner position throughout the period and I have found there is a real and substantial possibility that but for the Accident, she would have eventually succeeded in moving up within ICBC. Again, it is very difficult to predict how far Ms. Boal would have moved within ICBC and the timing of any promotions she would have secured. While I view it as possible that she would have secured a promotion in the period prior to the trial, I assess the probability of that contingency as fairly low, particularly given the intervening maternity leave. In the circumstances, I assess Ms. Boal's past loss of income or income earning capacity at \$290,000, which reflects the real and substantial possibility (albeit a relatively low probability) that she would have secured a modest promotion at some point after her maternity leave.

- [158] Before turning to Ms. Boal's claim for future loss of earning capacity, I wish to briefly address the defence position with respect to her past income loss. The defence accepted Mr. Benning's estimates as a starting point but submitted that an award of \$200,000 would more than compensate Ms. Boal under this head of damages because she could have worked more in the pre-trial period than she did work. There is no evidence to support that submission and I reject it for that reason.

Future Loss of Income Earning Capacity

- [159] The Court of Appeal has discussed the principles governing claims for loss of earning capacity in numerous cases. In the oft-cited decision of *Morgan v. Galbraith*, 2013 BCCA 305 at para. 53, the Court, citing its earlier decision in *Perren v. Lalari*, 2010 BCCA 140, described the approach as follows:

in *Perren*, this Court held that a trial judge must first address the question of whether the plaintiff had proven a real and substantial possibility that his earning capacity had been impaired. If the plaintiff discharges that burden of proof, then the judge must turn to the assessment of damages.

[Emphasis in original.]

- [160] In *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at paras. 7 - 10, the Court of Appeal recently restated the operative principles which had previously been revisited in *Dornan v. Silva*, 2021 BCCA 228, *Rab v. Prescott*, 2021 BCCA 345, and *Lo v. Vos*, 2021 BCCA 421:
- [7] The assessment of an individual's loss of future earning capacity involves comparing a plaintiff's likely future had the accident not happened to their future after the accident. This is not a mathematical exercise; it is an assessment, but one that depends on the type and severity of a plaintiff's injuries and the nature of the anticipated employment in issue: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144. Despite this lack of mathematical precision, economic and statistical evidence "provide[s] a useful tool to assist in determining what is fair and reasonable in the circumstances": *Dunbar v. Mendez*, 2016 BCCA 211 at para. 21, citing *Parypa v. Wickware*, 1999 BCCA 88 at para. 70.

- [8] Courts should undertake a tripartite test to assess damages for the loss of future earning capacity. In *Rab v. Prescott*, 2021 BCCA 345, Grauer J.A. clarified this approach. Although the judge did not have the benefit of *Rab* when he wrote his reasons, the principles summarized therein are not novel; they have been the applicable law for a considerable time.
- [9] I will repeat those principles here, drawing heavily on *Rab*. I do so because it is clear the judge did not undertake the requisite steps when assessing damages, nor did he make the findings of fact necessary to quantify an award. This dearth of analysis leaves us to speculate on the basis for the award, as it did in *Schenker v. Scott*, 2014 BCCA 203 at paras. 55-56.
- [10] Justice Grauer in *Rab* described the three steps to assess damages for the loss of future earning capacity:
- [47] ... The first is evidentiary: whether the evidence discloses a potential future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring--see the discussion in *Dornan* at paras. 93-95.
- [161] In this case, it is beyond dispute that Ms. Boal has established a potential future event that could lead to a loss of capacity. The evidence overwhelmingly demonstrates that the injuries she sustained in the Accident have limited her functional capacity and that the limitations are likely permanent. As a result, she has become less valuable to herself as a person capable of earning income in a competitive labour market; she is less marketable or attractive as an employee to potential employers. There has been an impairment of the capital asset: see *Rab* at paras. 36 and 60.
- [162] It is also clear that there is a real and substantial possibility (indeed a certainty) that this loss of capacity will cause a pecuniary loss. The impairment I have identified will leave Ms. Boal less able to compete in the marketplace, with economic consequences. I have found that she is likely to continue to suffer from physical pain and psychological symptoms, with associated limitations in functional capacity, even if she follows all treatment recommendations. I accept her evidence about her career intentions and aspirations before the Accident. There is no doubt that those intentions and aspirations are no longer realistic for her. She has established a real and substantial possibility of a pecuniary loss.
- [163] The difficulty, in this case, presents at the third step - assessing the value of that future loss, which must include assessing the relative likelihood of future events or contingencies.
- [164] In *Steinlauf v. Deol*, 2022 BCCA 96, Grauer J. A. for the Court discussed the third step as follows:

[55] As for the quantification, this Court described the process in *Gregory v Insurance Corporation of British Columbia*, 2011 BCCA 144 at para 32:

... An award for future loss of earning capacity thus represents compensation for a pecuniary loss. It is true that the award is an assessment, not a mathematical calculation. Nevertheless, the award involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future after the accident has happened: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) at para. 8....

[56] Accordingly, as discussed in *Dornan* at para 156, it became necessary to assess the respondent's without-accident earning potential, and what the respondent was likely to earn as a result of the accident. At the same time, as discussed in *Andrews v Grand & Toy Alberta Ltd*, [1978] 2 SCR 229 at 251: "It is not loss of earnings but, rather, loss of earning capacity for which compensation must be made".

[165] In *Dornan*, *Grauer J.A.* discussed the role of contingencies in the analysis in these terms:

[92] In approaching this part of the appeal, it is useful to remember that we are dealing with specific contingencies, not general contingencies. The importance of evidence in cases involving a specific contingency was discussed in *Graham* (and cited with approval by this Court in *Hussack*):

46 [C]ontingencies can be placed into two categories: general contingencies which as a matter of human experience are likely to be the common future of all of us, e.g., promotions or sickness; and "specific" contingencies, which are peculiar to a particular plaintiff, e.g., a particularly marketable skill or a poor work record. The former type of contingency is not readily susceptible to evidentiary proof and may be considered in the absence of such evidence. However, where a trial judge directs his or her mind to the existence of these general contingencies, the trial judge must remember that everyone's life has "ups" as well as "downs". A trial judge may, not must, adjust an award for future pecuniary loss to give effect to general contingencies but where the adjustment is premised only on general contingencies, it should be modest.

47 If a plaintiff or defendant relies on a specific contingency, positive or negative, that party must be able to point to evidence which supports an allowance for that contingency. The evidence will not prove that the potential contingency will happen or that it would have happened had the tortious event not occurred, but the evidence must be capable of supporting the conclusion that the occurrence of the contingency is a realistic as opposed to a speculative possibility: *Schrump v. Koot*, *supra*, at p. 343 O.R.

[93] The process, then, as discussed above at paras 63-64, is one of determining whether, on the evidence, the contingency or risk in question is a real and substantial possibility. If it is, then the process becomes one of assessing its relative likelihood, as we saw from the excerpt from *Athey* quoted above at paragraph 64.

[Emphasis added.]

[166] Thus, the application of a specific contingency, whether positive or negative, engages the "real and substantial possibility" analysis, and not merely the "relative likelihood" analysis that follows. If the contingency is a real and substantial possibility, the process becomes one of assessing its relative likelihood.

[167] The Court of Appeal expressly affirmed in *Lo* at para. 39, that the burden of proof in establishing that a contingency should apply lies on the party seeking to assert it.

[168] Ms. Boal's position on the quantification of her loss of future earning capacity (i.e., the third step) is based on the following submissions:

1. in assessing her without-Accident earning capacity:
 - a) it is appropriate to apply a general, negative contingency for survival probability;
 - b) no general labour market contingencies (choosing not to participate in the workforce, unemployment, and part-time rather than full-time employment) should be applied because the evidence establishes that she had a strong attachment to the workforce, with a stable employer, in a unionized position at a Crown corporation, and because her analysis does not include a positive contingency for the very real possibility she would have been promoted at ICBC; and
 - c) alternatively, if a deduction for general labour market contingencies is appropriate, the reduction should be based on statistics for males rather than females because her employment history and pre-Accident career plans demonstrate that male statistics (which would generate a smaller reduction) would more accurately predict her without-Accident earning potential; and
2. her Accident-related injuries have left her competitively unemployable.

[169] In the result, Ms. Boal quantifies her claim under this head of damages at \$1,500,000, which reflects a without-Accident capacity to retirement at age 65 based on the present value of her compensation (including non-wage benefits) at the time of the Accident, without any positive contingency associated with the possibility of future raises or promotions, and with a small deduction to reflect the possibility that she will work sporadically after her position at Meira can no longer be accommodated.

[170] The defendants take no issue with Ms. Boal's entitlement to an award under this head of damages. However, the defence quantifies her loss at only \$400,000, which reflects two differences in approach from Ms. Boal's quantification:

1. the defence says that Ms. Boal's without-Accident earning potential to retirement at age 65 should reflect the present value of her compensation at the time of the Accident, without any positive contingency associated with the possibility of future raises or promotions, but with general, negative labour market contingencies based on female statistics; and

2. the defence says Ms. Boal has significant residual earning capacity, and the quantification of her loss should reflect the assumption that she will work 20 hours a week at \$34 an hour (her current hourly wage from Meira) or she will return to work part-time at ICBC in 2024, once Jackson is enrolled in school.
- [171] There are flaws in the position of each party. Ms. Boal has understated her with-Accident capacity: I am not persuaded that she has virtually no residual capacity. The defence has understated Ms. Boal's without-Accident capacity and overstated her with-Accident capacity: I am not persuaded that general, negative labour market contingencies should be applied when assessing her without-Accident capacity unless positive contingencies associated with future raises and promotions are also applied and, while I am persuaded that Ms. Boal has residual earning capacity, the defence analysis does not adequately reflect the impact of her functional limitations and need for extensive accommodations.
- [172] In my view, Ms. Boal's approach ultimately reflects an accurate assessment of her without-Accident earning capacity. Again, I accept her evidence about her career intentions and aspirations before the Accident. Had she not been injured, it is very likely she would have continued to work at ICBC to retirement at about age 65. As explained in the past loss of income section of these Reasons, it is likely that she would have eventually secured an internal transfer into a better paying position in the Wellness Department, or as a manager. No real and substantial possibility of any specific negative contingency was established.
- [173] The question then is whether there should be a deduction for general labour market contingencies and, if so, whether male or female statistics should be used. I am mindful of the need to remember that everyone's life has "ups" as well as "downs". In this case, particularly given Ms. Boal's strong pre-Accident attachment to the workforce and her other career-related attributes which I have already discussed, any deduction for general labour market contingencies (whether based on male or female statistics) would be offset by the significant positive contingency that she would have secured an internal transfer into a better paying position at ICBC.
- [174] Using the collective agreement, Mr. Benning estimated Ms. Boal's total annual income at the time of the Accident, including non-wage benefits, at \$74,299. He explained the use of income multipliers to express the present value of a future income stream. He calculated an "actuarial multiplier" for Ms. Boal (which reflects only a contingency for premature death) of 22,891. On the assumption that Ms. Boal would continue to earn \$74,299 per year to retirement, the use of that multiplier generates an estimate of Ms. Boal's without-Accident future employment income of about \$1,700,000 ($\$74,299/1,000 \times 22,891$). In light of my conclusions that no specific negative contingencies were established and any deduction for general labour market contingencies would be offset by the positive contingency that Ms. Boal would have secured raises and a promotion at ICBC, \$1,700,000 is a fair and accurate assessment of her without-Accident earning capacity.
- [175] I turn now to consider Ms. Boal's with-Accident, or residual, earning capacity.

- [176] I start with what is known. From the evidence as a whole, it is apparent that Ms. Boal is very intelligent and articulate, and she has a good work ethic and marketable skills, including computer skills and communication skills. She enjoys working. By the time of the trial she was working about 12 hours a week for Meira and performing her duties well. Her condition is not likely to worsen. On the other hand, there is little prospect of improvement in her physical symptoms. She is very likely to continue to suffer from pain on a daily basis, neurological symptoms in her right arm and hand several times a week, and one to two severe headaches per week (with some prospect of improvement in the headaches). There is some prospect of improvement in her depression but it is likely that the anxiety and stress associated with the somatic symptom disorder will remain at current levels. In all the circumstances, maintaining her current level of employment, with some prospect of increasing her hours if the most optimistic prognoses are borne out, is her likely best-case scenario.
- [177] However, the evidence establishes real and substantial possibilities that must be reflected as negative contingencies. From Ms. Radford's evidence, I conclude that there is a real and substantial possibility that Ms. Boal will lose her position at Meira in the event that Ms. Radford sells the business or brings on a partner. There was some uncertainty in Ms. Radford's evidence about whether she will sell the business or bring on a partner but, if she does either, there is a real and substantial possibility that Ms. Boal will lose her job because a new owner may be unprepared to continue to offer the significant accommodations she requires. In a related vein, Ms. Boal's success at Meira is due in large part to those accommodations and, if she loses her job at Meira, her need for extensive accommodations will significantly narrow the pool of potential employers which, in turn, is likely to lead to periods of unemployment. This is the case even bearing in mind Dr. Quee-Newell's critique of Mr. Lawless' evidence. In addition, due to her significantly diminished functional capacity, as corroborated by Ms. Craig, she is limited to occupations with light physical demands which will further narrow the types of jobs she can perform and this is likely to contribute to periods of unemployment.
- [178] Ms. Boal earns \$34 an hour in her current position. If she continues to work about 12 hours per week, 48 weeks per year (allowing for some vacation time), she will earn \$19,584 per year. Using Mr. Benning's actuarial multiplier of 22,891, that translates to future earnings of \$448,297 ($\$19,584/1,000 \times 22,891$). As I have said, there is a real and substantial possibility that Ms. Boal's condition will improve enough for her to increase her hours and it is likely that she will receive increases to her hourly rate over time. In all the circumstances, I consider that \$880,000 is an appropriate assessment of Ms. Boal's best-case with-Accident earning capacity. This is an estimate of her future earnings if she was to work 20 hours a week, for 48 weeks a year, at \$40 an hour.
- [179] It is impossible to determine with precision the likelihood of the various negative contingencies I have identified. The best I can do is say that I consider it likely that Ms. Boal's future earnings will not reflect the best-case scenario due to the combination of these

contingencies and the real and substantial possibility that she will not be able to work as much as 20 hours a week on a sustainable basis. After taking into account all of the real and substantial possibilities, overall, I consider Ms. Boal's future earning capacity to be about 75 percent of the best-case scenario, or \$660,000.

- [180] A comparison of Ms. Boal's likely without-Accident future earning capacity (\$1,700,000) and her likely with-Accident future earning capacity (\$660,000) leads me to assess her damages for loss of future earning capacity at \$1,040,000.

Cost of Future Care

- [181] A plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore them to their pre-accident condition, insofar as that is possible, and to preserve and promote their mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 78 (S.C.), aff'd (1987), 49 B.C.L.R. (2d) 99 (C.A.); *Spehar v. Beazley*, 2002 BCSC 1104 at para. 55, aff'd 2004 BCCA 290; and *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
- [182] The test for assessing an appropriate award is an objective one based on the medical evidence. An item of future care must be reasonable and medically justified, not medically necessary, to be recoverable: *Milina* at para. 212. While evidence from various health care professionals can establish what is necessary in terms of future care, an evidentiary link between a "physician's" assessment of pain, disability, and recommended treatment and the care recommendations of a qualified health care professional is required: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at paras. 38-39.
- [183] Ms. Boal claims \$797,841 for the cost of future care. This is based on care recommendations from Dr. Claire Robinson, Dr. Gordon Robinson, Dr. Salvian, Dr. Underwood, Dr. Witty and Ms. Craig; costing determined by Dr. Witty of the care items recommended; and Mr. Benning's calculation of the present value of these items (as set out in table 7 in his report) using a future cost of care multiplier that reflects the contingency for premature death. Where Dr. Witty provided a range of costs, or periods, Mr. Benning used the midpoint of the range in his analysis.
- [184] Taken together, the healthcare professionals recommend ongoing Botox injections, ongoing medications, ergonomic supplies (electric toothbrush, replacement heads, stress matt, rubber grips), a one-time ergonomic work station assessment, occupational therapy (one-time assessment and ongoing sessions), psychological counselling, Feldenkrais physiotherapy, chiropractic treatments, massage therapy, orthotics, homemaking support (initial session, eight hours per week to age 54 when the youngest child is projected to leave home, and four hours per week thereafter to age 76), Pilates, and access to a gym and pool. Some of these items represent one-time expenses, some represent expenses incurred only in the first year, and some represent annual expenses for life. In oral submissions, Ms. Boal's counsel clarified that the claim for psychological counselling was \$10,000 and not the

\$30,670 noted in Mr. Benning's table 7.

- [185] The defence submits that an award of \$236,187 is justified under this head of damages. The defence concedes that the test has been met in relation to the Botox injections, Cymbalta, psychological counselling, physiotherapy, one-time chiropractic therapy, and some homemaking support. The defence calculation was based on an annual cost of \$1,360 for Botox but Dr. Witty clarified that the actual annual cost is \$4,056 (\$780 per session with, on average, 5.2 sessions per year).
- [186] Leaving aside the misunderstanding about the cost of Botox, the positions of the parties reflect the following differences:
- a) the defence has not accepted all the claimed future care items as reasonable and medically justified; and
 - b) the defence submits that the amount of homemaking support claimed is excessive and that an initial session plus three hours per week until Jackson is 15 years old, and three hours every four weeks thereafter, is reasonable.
- [187] The defence did not provide an explanation for omitting from its quantification of this head of damages the claims for CBD oil, THC oil, ergonomic supplies, an ergonomic work station assessment, occupational therapy, ongoing chiropractic treatments, ongoing massage therapy, orthotics, Pilates, or a gym/pool pass.
- [188] I start by observing that for each of the future care items claimed by Ms. Boal, except for custom orthotics, there is evidence from at least one healthcare professional that is capable of meeting the legal test. In the circumstances, except to the extent noted below, I am satisfied that the test has been met in respect of the items claimed.
- [189] The defence expert witness, Ms. Walker, did not comment on the claims for CBD oil and THC oil. As such, Ms. Boal's evidence with respect to these is unchallenged. I find that the test has been met with respect to these items.
- [190] Ms. Walker accepted the claim for ergonomic supplies as appropriate and she appears to have accepted the claim for an ergonomic work station assessment as well. I find that the test has been met with respect to these items.
- [191] Ms. Walker accepted that Ms. Boal would benefit from 48 hours of occupational therapy and a further 48 hours with a rehabilitation assistant. This does not appear to be materially different from the claim for occupational therapy. I find that that test has been met with respect to these items in the amounts claimed.
- [192] Ms. Walker expressed the opinion that the number of sessions of ongoing chiropractic treatments and massage therapy claimed (up to 12 per year for each modality) was excessive. In her view, between eight and 12 sessions per year of massage therapy and chiropractic treatment combined is appropriate. In her view, these therapies should be "capped with aging" by age 75. While the evidence does establish that these items are

medically justified, in my view it is not reasonable to quantify the awards for these items on the basis that Ms. Boal will attend treatments for each of these modalities twice a month, every month, for the rest of her life. I accept Ms. Walker's opinion with respect to these items and award the cost claimed, but for only 10 sessions per year (the midpoint of Ms. Walker's recommendation) for both massage therapy and chiropractic treatment combined, and only to age 75.

- [193] With respect to orthotics, Dr. Walker expressed the view that Dr. Witty's costing was excessive because it was based on custom orthotics. She recommended \$120 every two years for "off-the-shelf" orthotics. I agree that the evidence does not support the conclusion that custom orthotics are medically justified. I find that a claim of \$60 every year for off-the-shelf orthotics has been established.
- [194] Ms. Walker actually recommended more Pilates sessions than Ms. Boal claimed. In the circumstances, I find that Ms. Boal's claim in relation to Pilates has been established.
- [195] Ms. Walker agreed with the claim for a fitness pass but recommended terminating this item at age 75. As with the claim for chiropractic treatment and massage therapy, in my view it is not reasonable to quantify an award for a fitness pass on the basis that Ms. Boal will purchase a fitness pass each and every year for life. I accept Ms. Walker's opinion and award the cost claimed, but only to age 75.
- [196] This leaves the claim for homemaking support. Again, Ms. Boal's claim for homemaking support consists of an initial session, eight hours per week to age 54 when the youngest child is projected to leave home, and four hours per week thereafter to age 76. This reflects Dr. Witty's opinion, which was based in part on the American Time Use Survey ("ATUS") which she said was an accepted source in life care planning. According to the ATUS data, the total time spent by married working mothers with children under the age of 18 on homemaking, food preparation and cleanup, and shopping is about 14 hours a week.
- [197] No issue is taken with the claim for an initial homemaking session. However, Ms. Walker expressed the view that three hours a week until Ms. Boal's youngest child is 15 years old, and three hours every four weeks thereafter, would be adequate. To a significant extent the foundation for her disagreement with Dr. Witty's opinion was not convincing (e.g., based in part on what she says domestic cleaning agencies "typically" provide) and she did not appear to include time for food preparation and shopping. She agreed that the ATUS data was reasonable but pointed out that the same data indicated that children over the age of 15 years contribute nearly six hours a week to household activities.
- [198] Although I accept that Ms. Boal's physical limitations preclude her from performing most homemaking tasks, I am not satisfied that her claim with respect to this item is reasonable. She is not entirely immobile and she can perform some lighter household tasks. In addition, Ethan and Nicholas are now teenagers and can be expected to contribute to some extent. In the circumstances, and bearing in mind this is an assessment and not a mathematical calculation, I award Ms. Boal 75 percent of the amount claimed for

homemaking support to age 76.

[199] For these reasons, I award Ms. Boal \$618,932 as damages for the cost of future care, which is broken down in the following table which is based on table 7 in Mr. Benning's report:

ITEM

COST

FREQUENCY

MULTIPLIER VALUE

PRESENT VALUE

FUTURE MEDICAL CARE ROUTINE

· Neurologist (Botox Injection)

\$4,056

Annual

30,291

\$122,860

MEDICATIONS AND SUPPLEMENTS

· Cymbalta

\$702

Annual

30,291

\$21,274

· CBD oil

\$888

Annual

30,291

\$26,899

· THC oil

\$93

Annual

30,291

\$2,817

ERGONOMIC SUPPLIES

· Electric toothbrush

\$67

One time

1,000

\$67

· Replacement heads

\$20

Annual

30,291

\$594

· Stress mat

\$67

Annual

30,291

\$2,036

· Rubber grips

\$31

Annual

30,291

\$933

VOCATIONAL

· Ergonomic work station

\$2,240

One time

1,000

\$2,240

PROJECTED EVALUATIONS

· Occupational therapy

\$840

First year

990

\$831

PROJECTED THERAPEUTIC MODALITIES

· Psychology

\$10,000

· Feldenkrais physiotherapy

\$2,240

First year

990

\$2,217

· Chiropractic treatments - initial

\$88

One time

1,000

\$88

· Chiropractic and massage treatments - ongoing

\$527

Annual to 75

25,702

\$13,545

· Occupational therapy

\$14,280

First year

990

\$14,134

ORTHOTICS/PROSTHEOTICS

· Orthotics

\$60

Annual

30,291

\$1,817

HOME SUPPORT

· Homemaking - initial

\$947

One time

1,000

\$947

· Homemaking - to age 54 years

\$18,469

Annual to age 54 years

13,431

\$248,057

· Homemaking - age 54 to 76 years

\$9,234

Annual age 54 to 76 years

12,179

\$112,461

HEALTH MAINTENANCE AND LEISURE

· Group Pilates

\$1,229

First year

990

\$1,216

· Gym/pool access to age 65 years

\$465

Annual to age 65 years

20,393

\$9,487

· Gym/pool access from age 65 years

\$326

Annual from age 65 to age 75

4,639

\$1,512

· Pilates

\$756

Annual

30,291

\$22,900

TOTAL

\$618,932

Special Damages

[200] Ms. Boal claims special damages of \$18,707.56 for a variety of items including the Botox treatments, physiotherapy, massage therapy, acupuncture, chiropractic therapy, medications, counselling, parking, equipment, and costs associated with the use of THC oil and CBD oil (Greenleaf Clinic membership expenses and purchases).

[201] There is no dispute that the specific costs underlying this claim were incurred. The defence concedes that most of the amounts claimed are reasonable and recoverable. However, the defence submits that the expenses associated with the use of THC oil and CBD oil are not reasonable and should not be allowed. The defence says that although Ms. Boal's family physician referred her to the Greenleaf Clinic to be assessed, it is unclear whether Ms. Boal is using these products on the advice or prescription of a physician, and notes that Dr. Babbage said he would not recommend these products unless prescribed by a physician.

- [202] Justice Fleming summarized the applicable principles in *Dhillon v. Singer*, 2017 BCSC 414 at para. 200:
- [200] Claims for special damages are subject to a standard of reasonableness in the context of the injuries suffered: *Redl v. Sellin*, 2013 BCSC 581 at para. 55. Medical justification for a treatment related expense aimed at promoting the plaintiff's physical or mental well-being is a factor in determining whether it is reasonable. Subjective factors can also be considered, including whether the plaintiff believes the treatments were medically necessary. With respect to cost, the courts have been prepared to allow claims for expenses at the level of optimum care, although plaintiffs are not entitled to recovery for the cost of any procedure they believe will make them feel better.
- [203] Ms. Boal testified that she learned about the potential benefits of cannabis products at ChangePain, the pain clinic she was referred to by Dr. Claire Robinson. Dr. Claire Robinson gave her a referral to Greenleaf but noted that the use of medical cannabis is beyond her scope of practice. Ms. Boal testified that a physician at Greenleaf prescribed CBD for nerve pain and THC for sleep. Dr. Underwood noted that Ms. Boal was using these products and did not object or suggest she stop using them. Ms. Boal testified that she has found the CBD oil helpful in alleviating her nerve pain and the THC oil helpful as a sleep aid.
- [204] The weight of the evidence satisfies me that there is a medical justification for the THC oil and CBD oil. Again, Dr. Claire Robinson made the referral, Dr. Underwood does not object, and a physician at Greenleaf prescribed the products. In addition, Ms. Boal testified that she has found the products to be helpful. In all the circumstances, I am satisfied the test of "reasonable in the context of the injuries suffered" has been met.
- [205] I award Ms. Boal special damages of \$18,707.56.

In Trust Claim

- [206] Ms. Boal advances an "in trust" claim of \$50,000 for homemaking services performed by Mr. Boal in the period between the Accident and the trial. The defence has not conceded that such an award should be made, but did not specifically address the matter in final argument.
- [207] In *Bystedt v. Hay*, 2001 BCSC 1735 at para. 180, aff'd 2004 BCCA 124, D. Smith J., as she then was, summarized the principles in assessing this head of damage:
- [180] From a review of these authorities one can construct a summary of the factors to be considered in the assessment of "in trust" claims:
- (a) the services provided must replace services necessary for the care of the plaintiff as a result of a plaintiff's injuries;
 - (b) if the services are rendered by a family member, they must be over and above what would be expected from the family relationship (here, the normal care of an uninjured child);

- (c) the maximum value of such services is the cost of obtaining the services outside the family;
- (d) where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the court will award the lower amount;
- (e) quantification should reflect the true and reasonable value of the services performed taking into account the time, quality and nature of those services. In this regard, the damages should reflect the wage of a substitute caregiver. There should not be a discounting or undervaluation of such services because of the nature of the relationship; and,
- (f) the family members providing the services need not forego other income and there need not be payment for the services rendered.

[208] As already discussed, Ms. Boal testified that since the Accident she has been unable to perform most of the homemaking tasks she performed before the Accident, and that Mr. Boal has been doing "almost all the things, all the time". Mr. Boal testified that since the Accident he has spent about three hours a day on homemaking tasks that Ms. Boal used to perform, including laundry, cleaning, and vacuuming. I accept this evidence.

[209] There were 2,247 days between the Accident and the first day of the trial. Dr. Witty costs homemaking services at between \$37.50 and \$42.00 per hour. At the low end of that range the cost of three hours a day would amount to more than \$250,000 if the services in question were sourced externally.

[210] Ms. Boal concedes that the tasks Mr. Boal assumed would fall within the "give and take" expected between family members, to a degree. However, she submits that the time he has spent providing necessary household services that she used to perform goes over and above what would be expected from the family relationship. On this basis, she submits that \$50,000 would be an appropriate compensatory award under this head of damages.

[211] I agree with Ms. Boal's submission in this respect and award \$50,000.

Conclusion

[212] The defendants' contributory negligence claim is dismissed.

[213] In summary, the damages awarded to Ms. Boal are:

Non-pecuniary damages

\$220,000

Past loss of income

Future loss of income earning capacity

Cost of future care

\$290,000

\$1,040,000

\$618,932

Special damages

In Trust Claim

Total

\$18,707.56

\$50,000

\$2,237,639.56

[214] Subject to further submissions, Ms. Boal is entitled to her costs. If the parties cannot agree or if there are circumstances of which I am unaware, they may make arrangements to speak to that issue.

"Warren J."

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