

CANADA / JUDGMENT

Jenkins v. Oliver

2020 BCSC 773

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 773 Jenkins v. Oliver IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jenkins v. Oliver, 2020 BCSC 773 Date: 20200522 Docket: M174147 Registry: Vancouver Between: Sarah Melissa Jenkins Plaintiff And Lorianne Oliver and Rhonda Winnifred Weys Defendants

- and - Docket: M194694 Registry: Vancouver Between: Sarah Jenkins Plaintiff And Robert Bannatyne, Mercedes-Benz Financial Services Canada Corporation/ La Corporation De Services Financiers Mercedes-Benz Canada Defendants Before: The Honourable Mr. Justice Funt Reasons for Judgment Counsel for the Plaintiff: R. Wishart T. Gloux Counsel for the Defendants: S. Katalinic F. Lin Place and Dates of Trial: Vancouver, B.C. September 9-13, 16, 18-19, 2019 Place and Date of Judgment: Vancouver, B.C. May 22, 2020 TABLE OF CONTENT

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1. introduction

[1] The plaintiff seeks damages with respect to two separate motor vehicle accidents. The accidents occurred on June 9, 2015 ("Accident #1") and September 9, 2018 ("Accident #2") (collectively, the "Accidents").

[2] The respective defendants have admitted liability for the Accidents. They concede that to the extent that the plaintiff suffered injuries, the injuries may be viewed as indivisible and without the need to apportion the assessment of any damages as between the two accidents.

[3] The plaintiff says that Accident #1 caused the following injuries, with exacerbation, caused by Accident #2:

- a) Chest wall muscle strain;
- b) Left shoulder strain;
- c) Low back and hip pain;
- d) Musculoligamentous injury to the cervical, lumbar and thoracic spine;
- e) Muscle tension headaches;
- f) Right and left temporomandibular jaw pain;
- g) Depressed mood;
- h) Anxiety;
- i) Post-traumatic stress disorder; and
- j) Sleep disturbance.

[4] The plaintiff seeks the following damages:

- a) Non-pecuniary: \$110,000 to \$180,000
- b) Future loss of earning capacity: \$1,356,322
- c) Costs of future care: \$141,175
- d) Special damages: \$4,735 Total: \$1,612,232 to \$1,682,232

[5] The defendants say that the appropriate award is:

- a) Non-pecuniary: \$50,000

- b) Future loss of earning capacity: \$0 to \$10,000
- c) Costs of future care: \$0
- d) Special damages: \$3,258 Total: \$53,000 to \$63,258

[6] For the reasons that follow, the Court finds the plaintiff's total damages are:

- a) Non-pecuniary damages: \$100,000
- b) Future loss of earning capacity: \$40,000
- c) Costs of future care: \$75,043
- d) Special damages: \$3,258 TOTAL: \$218,301

2. background

[7] The plaintiff is 43 years old. She is 5 feet 3 inches tall and has maintained an athletic lifestyle. She has an eight-year-old son from a previous relationship and she is now married to Robert Bannatyne, one of the defendants in the action related to Accident #2.

[8] In June 2005, the plaintiff became a Registered Acupuncturist and in May 2015, she became a Registered Traditional Chinese Medicine Practitioner.

[9] After becoming a Registered Acupuncturist, the plaintiff moved from Victoria to Calgary and practiced in Calgary.

[10] In 2010, the plaintiff moved from Calgary to Kelowna. Shortly after, her son was born.

[11] In February 2012, the plaintiff started to work at Okanagan Health & Performance ("OHP") where she practiced acupuncture. The plaintiff would receive 60% of her billings with OHP receiving 40% of them to cover its associated costs and to provide it with its profit.

[12] At OHP, the plaintiff worked approximately 20 hours per week initially with her work hours increasing over time as her practice increased.

[13] In December 2012, while continuing to practice as an acupuncturist with OHP the plaintiff started to study traditional Chinese medicine through the Institute of Classics in East Asian Medicine. As noted, in May 2015, the plaintiff with her studies successfully completed also became a Registered Traditional Chinese Medicine Practitioner. Accident #1 occurred the following month

[14] Since May 2015, the plaintiff has taken further courses and training in order to have the skills and recognition to provide particular types of treatments and therapies.

[15] With her further skills, she found that OHP was not well suited for her expanded range of practice (e.g., no space to set up safely a pharmacy for herbal formulas). She also did not view the 60/40% sharing arrangement as sufficiently fair to her.

- [16] In July 2016, the plaintiff moved from OHP to join the Core Centre of Health ("Core Centre") in Kelowna. The Core Centre provides space with reception services to health practitioners such as chiropractors, massage therapists, and physiotherapists. The Core Centre charges a monthly rent based on the space the practitioner rents from it.
- [17] The plaintiff's income tax returns and information show the following gross business and net business income:
- | Year | Gross Business Income | Net Business Income |
|------|-----------------------|---------------------|
| 2013 | \$45,589 | \$32,272 |
| 2014 | \$59,622 | \$17,243 |
| 2015 | \$68,492 | \$30,237 |
| 2016 | \$84,081 | \$42,018 |
| 2017 | \$122,312 | \$82,517 |
| 2018 | \$141,622 | \$77,693 |
- [18] At the time of Accident #1, the plaintiff was living with her son. About a year earlier, the plaintiff had met Robert Bannatyne and they had started a romantic relationship.
- [19] The relationship developed over time. In the fall of 2015, the plaintiff and her son started to live with Mr. Bannatyne in his townhouse.
- [20] The plaintiff shares parenting time of her son on a 50/50 basis with her son's father.
- [21] Mr. Bannatyne works as an industrial inspector for a large oil company. He is out of town on a week-on-week-off basis.
- [22] On September 7, 2018, the plaintiff and Mr. Bannatyne married. Accident #2 occurred two days later.
- [23] In May 2019, the plaintiff and Mr. Bannatyne purchased a house in Kelowna and took occupancy in July 2019.
- [24] As part of her practice, the plaintiff performs acupuncture, gives needle injections, provides intravenous therapy, and dispenses Chinese herbs and medicines (which she will prepare from the requisite ingredients).
- [25] The plaintiff's practice is physically demanding. It often involves positioning the patient in an exact position and then manipulating the patient's muscles so that the needle or injection is administered as targeted without hitting a particular nerve or blood vessel which could cause nerve damage or a possible stroke. A muscle spasm can "pull the needle" the wrong way.
- [26] Many of the plaintiff's patients are quite a bit larger than she is. Many patients will sometimes reflexively kick or move in reaction to a needle insertion.
- [27] The plaintiff's practice is also mentally demanding in that it requires particular focus and concentration to ensure that the needles and injections are precisely administered.
- [28] The mixing of the Chinese herbs and ingredients also requires concentration, similar to that of a pharmacist, to ensure that a mistake is not made in the combination of the correct herbs and ingredients and in the correct amounts.

- [29] The plaintiff currently rents two rooms from the Core Centre for a total of \$2,695 per month. The plaintiff says that as a result of the injuries she suffered she requires more breaks during her practice days resulting in a loss of approximately two hours per day in billable patient time.
- [30] The plaintiff has continued to upgrade her skills by taking further courses in Traditional Chinese medicine and injection therapies. She testified that she has recently completed a course on ozone therapy training, has acquired an oxygen tank and ozone generator, and can now undertake ozone injection therapy.
- [31] Mr. Bannatyne testified that the plaintiff will also work at home completing patient charts.
- [32] The plaintiff now serves on the board of directors of the Acupuncturists and Traditional Chinese Medicine Association.
- [33] The plaintiff uses Instagram, Facebook, and other social media platforms to help market her practice. Her practice is also described on the Core Centre's website.
- [34] Before Accident #1, the plaintiff was a very fit individual. She ran regularly. She practiced yoga. She also biked, hiked, and had started to learn to ski. Since the Accidents, she has remained physically active (including running) but she says often with pain and with less enjoyment.
3. The Accidents
- a) Accident #1 - June 9, 2015
- [35] In Accident #1, on June 9, 2015, the plaintiff was driving her car, with her son secured in the centre of the back seat, proceeding on a green light through a controlled intersection in Kelowna. Lorianne Oliver, the defendant driver, was driving her car at 50 to 55 km/h and failed to see that her light was red. The collision occurred in the intersection. In a read-in, Ms. Oliver describes the impact as follows: Q Okay. And when the impact occurs, does your vehicle continue to push towards eastbound? A It didn't slide or anything. It just stopped. Q Okay. And what about the other vehicle, the Mazda [the plaintiff's car]? A It just stopped when it hit me. We just came to a dead stop.
- [36] The plaintiff's car was a write-off. The photographs of the plaintiff's car show damage to its front end. The plaintiff testified that her car was hit from the right. She braced for the impact.
- [37] At the accident scene, a fire crew attended. An ambulance crew was not called. The plaintiff and her son were taken to her home by the driver of a tow truck that had been called to the accident scene.
- b) Accident #2 - September 9, 2018
- [38] Accident #2 occurred on the Coquihalla Highway.

- [39] The defendant driver was Mr. Bannatyne. On September 9, 2018, Mr. Bannatyne was driving, with the plaintiff in the passenger seat and the plaintiff's son asleep in the back seat, on the Coquihalla Highway returning from the Sunshine Coast. The plaintiff and Mr. Bannatyne had married two days earlier at a small ceremony on the Sunshine Coast.
- [40] Mr. Bannatyne was driving a Mercedes C63 AMG S ("Mercedes"). At the time of Accident #2, it was raining heavily. The Mercedes hydroplaned with Mr. Bannatyne temporarily losing control. The result was that the front of the Mercedes made contact (a "glancing front end blow") with the centre divider and the Mercedes travelled sideways along the highway and then did a 360° rotation. Mr. Bannatyne was then able to bring the vehicle under control and was able to park on the side of the road. The Mercedes was driveable but not likely so for a longer distance. A tow truck was called.
- [41] The Mercedes was repaired for approximately \$27,000. Although the cost of the damage is significant, it was not apparently so relative to the value of the Mercedes. The photograph of the Mercedes shows damage, not extensive, to the front of the Mercedes.

4. proof

- [42] In *F.H. v. McDougall*, 2008 SCC 53, Justice Rothstein, writing for the Supreme Court of Canada, stated that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (para. 46).

5. plaintiff's injuries

- [43] The plaintiff testified that immediately after Accident #1, "her teeth were hurting" and "her jaw was hurting". She felt like her teeth were "cracked" and "nervy" at the front of her teeth. She said she felt like her jaw had hit something but she believed it had not. Her head and neck also hurt.
- [44] The following day, the plaintiff had a headache. She went to work and one of the chiropractors at the Core Centre helped her with a treatment. At the Core Centre, it is common for one practitioner to treat another either as a favour, as a manner by which the practitioners may get to know one another socially, or as a source of future referrals.
- [45] The plaintiff also wished to see her family physician, Dr. S. Claremont, and was seen by one of Dr. Claremont's clinic colleagues, Dr. D. Green. I understand that Dr. Claremont was not available.
- [46] Over the next several weeks, the plaintiff's headaches did not go away. Her shoulder and neck started to hurt. She had intermittent sciatica. She also had rib cage and chest pain. She also says that her hips would "click" sometimes when she would run and she generally "stiffened-up" around her hips.

- [47] The plaintiff says that the sciatica has resolved but the other injuries have not. She describes her other injuries are evolving and she is trying to manage her injuries. On September 22, 2015, the plaintiff told Dr. Green that her low back pain had resolved. Prior to Accident #1, the plaintiff had also sought treatment at OHP for low back and sacroiliac joint pain on several occasions.
- [48] The plaintiff says that her most disabling injury is her headaches because they affect her concentration. She describes that she can "mask" her other injuries in front of a patient but a headache with a loss of concentration she cannot. She says she worries about patient safety when she loses full concentration when preparing Chinese herbal medicines.
- [49] After Accident #2, the plaintiff described that her neck, shoulders, and legs felt the same as before but "tight". She testified that it was hard to divide her Accident #1 injuries from her Accident #2 injuries over a longer period with the exception that she is more anxious after Accident #2.
- [50] After Accident #2, the plaintiff did not immediately go to her family physician. She thought she could get treatment from her colleagues at the Core Centre and she did.
- [51] In dealing with medical professionals, the plaintiff testified that often would not divulge that which she believes is not necessary for the particular treatment she was seeking.
- [52] With respect to Dr. Claremont (and her colleague, Dr. Green) and Dr. D.A. Prout, a neurologist, who undertook an independent medical examination ("IME") of her, the plaintiff testified that many of her previous symptoms and treatments were not recorded because she was not asked specifically. She testified that she feels she can make decisions as to what is "relevant".
- [53] In contrast, in the plaintiff's meeting with Dr. A. Pirani, a dentist, who undertook an IME, the plaintiff told Dr. Pirani many more of her symptoms (jaw pain, teeth clenching, eye pain with headaches, right ear pain, chronic sore throat, difficulty swallowing, feeling of an object in her throat, sciatica, back pain, and snoring).
- [54] I find that the plaintiff's disclosure of symptoms depended on what was asked and what she thought was relevant.
6. medical evidence
- a) Dr. S. Claremont - Family Physician
- [55] Dr. Claremont is the plaintiff's primary family physician. Dr. Claremont was qualified to provide opinion evidence with respect to family medicine including the diagnosis, prognosis, and treatment of musculoskeletal and similar injuries.
- [56] When Dr. Claremont was not available, the plaintiff would often see Dr. Green. Dr. Claremont had access to Dr. Green's clinical notes and those of her other colleagues.

- [57] Dr. Claremont prepared a medical-legal report dated June 21, 2019. Some of the bases for Dr. Claremont's report come from a review of Dr. Green's clinical notes of Dr. Green's meetings with the plaintiff.
- [58] In her June 21, 2019 report, Dr. Claremont opines: In summary, [the plaintiff] experienced the following injuries as a direct result of the motor vehicle accident in June 2015: cervical strain, bilateral temporomandibular joint strains, low back strain, upper trapezius strain (affecting shoulders), anterior chest wall strain, insomnia, and emotional trauma. The neck, low back and jaw injuries and the psychological trauma have persisted. [The plaintiff] had no pre-accident symptoms or conditions that made her more susceptible to the resulting injuries. There have been no post-accident factors impeding her injuries or ability to recover from them. These symptoms were directly causally related to the motor vehicle accident. [The plaintiff] was not completely disabled from the vocational abilities as a result of the motor vehicle accident. However, she was partially disabled. She was unable to work full time hours for several months after the accident due to her symptoms. Her recreational, social, and household activities were impaired as a result of the motor vehicle accident injuries. For several months, she was not able to complete her normal housekeeping activities. She has had to curb her exercise routines due to persistent symptoms. Due to the persistence of the symptoms, the prognosis for [the plaintiff's] full recovery is poor. She is likely to experience intermittent flares in neck and jaw pain with resulting headaches over the ensuing years. The prognosis for recovering from the emotional trauma and insomnia is good with planned psychological therapy. Unfortunately, [the plaintiff's] ability to work full time hours consistently or to involve herself in vigorous physical exercise may be permanently impaired. I would recommend that she receive intermittent courses of chiropractic treatment and massage therapy as needed to maintain her function. It is also recommended that she consistently attend yoga.
- [59] Dr. Claremont's opinion as to the plaintiff's partial disability in relation to the plaintiff's vocation was based in large measure on what she understood the plaintiff had told her that she had reduced her work hours from eight to six hours per day (with two hours of rest). The plaintiff's 2014 gross income does not reflect eight-hour work days. In cross-examination, the plaintiff's testimony reflected about 28 hours per week on most weeks with some "off-and-on" Saturday hours. She also told Dr. A. Prout (a neurologist she saw on March 1, 2019) that before Accident #1, she was working about 20 hours per week.
- b) Dr. A. Prout - Neurologist
- [60] Dr. Prout, a medical doctor specializing in neurology, was qualified to provide opinion evidence with respect to neurology, including the diagnosis and treatment of musculoskeletal injuries and headache disorders.
- [61] Dr. Prout acknowledged that he is not an expert in temporomandibular joint disorders ("TMD"). He identified muscle tension in the plaintiff's jaw region.

[62] With respect to diagnosis and prognosis of the plaintiff, Dr. Prout opines (in part): [The plaintiff] suffered injuries in the subject [Accident #1] that consisted of musculoskeletal type injuries. In addition to the musculoskeletal injuries [the plaintiff] developed other symptoms in concert with the musculoskeletal injuries attributable to various factors but she did not in my opinion suffer any injuries of a neurologic nature. At the time of the subject accident [the plaintiff] suffered no loss of recollection surrounding the event and is aware of the events leading up to the accident, is aware of bracing for the accident and describes no post-traumatic amnesia. Immediately post-accident she was emotionally upset and shaky and concerned regarding her child who was in the vehicle. Based on the history provided to me by [the plaintiff] there is no suggestion that she suffered any type of head or brain injury in the accident. At the time of the accident [the plaintiff] suffered musculoskeletal type injuries to the neck in particular as well as to the upper back and shoulder girdle, particularly the left upper trapezius muscle (the muscle running between the neck and shoulder). In addition [the plaintiff] complained of early jaw symptoms on the right side suggesting that additional musculoskeletal injuries related to the right temporomandibular joint area and these injuries are out of my area of expertise. [The plaintiff] complained of early problems relating to headaches that overlapped with neck pain and had difficulties with poor sleep and complaints of anxiety which appeared to be superimposed on a tendency to being prone to anxiety and stress. I would defer to experts in the field of psychology with respect to whether or not [the plaintiff] developed any particular psychological sequelae to the accident. The headaches that [the plaintiff] has developed are in my opinion cervicogenic headaches (headaches due to musculoligamentous dysfunction in the neck region, particularly the high cervical region). The headaches that [the plaintiff] describes are not due to any type of head or brain injury but may be contributed to by muscle tension in the jaw region. In a delayed fashion [the plaintiff] appeared to describe low back pain that does not appear to be attributable to a specific back injury sustained in the accident. At the time of my assessment [the plaintiff] displayed no neurologic abnormalities but displayed musculoskeletal tenderness particularly in the high neck region. In addition [the plaintiff] displayed some reduction in range of motion of the left shoulder consistent with a musculoskeletal type injury to the shoulder girdle (predominantly the upper trapezius muscle region) and she displayed tenderness in the scalene muscles (the muscles anterior to the left trapezius muscle region). [The plaintiff] did not display any findings to suggest injuries to the thoracic or lumbar spines. With respect to the prognosis for [the plaintiff] as it relates to the musculoskeletal injuries and cervicogenic headaches, it is my opinion that, despite the length of time that has elapsed since the accident, [the plaintiff] does have potential for significantly better control of her pain symptoms, particularly the intermittent more severe headaches which in my opinion are post-traumatic cervicogenic headaches. It is apparent that [the plaintiff], given her occupation and training, is averse to conventional medical therapies, in particular therapies with any type of prescription medications. As a neurologist it is my opinion that the more severe headaches that [the plaintiff] describes may well be significantly improved with the use of prescription medications, be these antimigraine medications used on an as-needed

basis or a preventative approach to the headaches that she describes, in particular treatment such as botulinum toxin injections administered for treatment of chronic headache. In addition [the plaintiff] describes a tightness in the jaw and probable jaw clenching that could be contributing to the headaches described and amenable to local treatment including the possibility of a bite guard to prevent jaw and teeth clenching (bruxism).

c) Dr. A. Pirani - Dentist

[63] Dr. Pirani, a practicing dentist, was qualified to provide expert evidence with respect to dentistry, including the diagnosis, treatment, and prognosis of TMD, craniofacial pain, and cervical injury.

[64] In her June 2, 2019 opinion, Dr. Pirani states (in part): Headaches that appear after whiplash type of soft tissue injury to the cranio/ mandibular/ cervical area are very common. The head, neck and structures of the masticatory complex are subjected to first hyperextension type of forces followed by hyperflexion type of forces with several rebound instants. The soft tissue injury is worse if there was an angular component at the time of impact and the patient was unaware of the oncoming impact. During the hyperextension phase, there is ligamentous injury causing elongation/tearing of the check rein ligaments of the head (stylomandibular, sphenomandibular, stylohyoid and lateral ligaments), which are designed to keep the jaw from opening too wide. During the hyperflexion moment, as a result of the myotatic reflex of the masseters and temporalis muscles, the mandible slams on to the maxilla, first onto the anterior teeth and then closes onto the posterior teeth with great force causing compression of the TMjoints, resulting in elongation of the discal ligaments with disc displacement. This can result in patients to complain of jaw pain and joint sounds. Dysfunction of the TMjoints will result in patients experiencing temporal type of headaches, jaw pain at rest and on function.

[65] I note that the plaintiff testified that she did brace for Accident #1. As noted, where a person is unaware of oncoming impact, the injury may be worse.

[66] I also note that Dr. Pirani also thought that the plaintiff's car was "t-boned". As described above, the plaintiff's car's right front end was hit by Ms. Oliver's car as Ms. Oliver's car proceeded on a red light through the intersection with both cars coming to a "dead stop". As noted, the plaintiff's car was a write-off.

[67] Dr. Pirani provided objective evidence of the plaintiff's injury in relation to a TMD. Dr. Pirani testified that the plaintiff's left disc of the temporomandibular joint was medially displaced which Dr. Pirani could hear (joint sounds) with headphones using particular software. She also testified that with her finger, she could feel that the temporal tendon where it inserts into the ramus and could detect inflammation which Dr. Pirani described as "severe" based on the plaintiff's pain reaction to the touch of her finger. The medial pterygoids and right bisector were also tender (severe). Cone beam computer tomography showed the right condyle was not normal and had compression, increased calcification, with likely inflammation.

- [68] Dr. Pirani testified that once the check rein ligaments of the head are stretched, they cannot be brought back to their normal state. Prolotherapy and trigger point injections are used as treatments to reduce inflammation.
- [69] Dr. Pirani also describes in her opinion that during Accident #1, the muscles at the back of the plaintiff's neck were stretched which in turn caused these muscles to go into spasm. As a result, the muscles are shortened which causes the head to tilt upwards. A person will compensate by moving the head forward. Dr. Pirani adopted plaintiff's counsel's description as "goosenecking". This in turn causes the mandible to move back which then affects the temporomandibular joint.
- [70] As Dr. Pirani observed, the plaintiff had a forward head posture. Dr. Pirani stated that retraction of the mandible, in turn, may affect the space for the tongue and a common characteristic is snoring.
- [71] Dr. Pirani stated that X-Rays showed compression between C1 and C2.
- [72] Dr. Pirani stated that the plaintiff's headaches which were behind the eyes and in the temporal area also came from the upper cervical neck.
- [73] In her report, Dr. Pirani describes her recommended treatment: Phase I Stabilization: The recommended treatment for [the plaintiff] would be an unlocking procedure together with decompression type of therapy for the TMjoints using dual orthopedic appliance therapy and physical modalities. The day time appliance is to decompress the inflamed tissue, reduce adverse joint loading and allow healing. This would result in reduced pain in the TMjoints and the masticatory muscles with improved ranges of motion by strengthening of the musculoskeletal system to support the TMjoints and assist in return and support of normal head posture for relief and prevention of associated symptoms. The night time orthotic is to hold the mandible forward when she is supine, open the retro-lingual area to improve airway and to protect the dentition from protrusive parafunctional habit of bruxism. Treatments would include weekly to biweekly evaluations with re-evaluation at twelve weeks for gradually weaning her off the daytime orthotic. If she should fail this weaning procedure, then she would need Phase II treatment. It is well documented in the scientific literature that 80 to 85% of the patients do not need any further treatment after the stabilization phase, if the TMjoints have been repositioned in a stable orthopedic position with the masticatory muscles now at their normal resting length, with no inflammation or spasm. Physical modalities would be provided as required and may include the following:
1. Cold laser therapy
 2. Moist heat
 3. Soft tissue mobilization
 4. Prolotherapy injections

5. Trigger point injections
6. Phonophoresis (Ultrasound therapy with topical medication)
7. Vapocoolant with spray and stretch technique

[74] Dr. Pirani provides the following cost estimate: Phase I Treatment

1. Phase I Treatment for 15-20 weeks including fabrication of daytime and nighttime orthotics, supervision of progress, adjustment and reline of appliances as required, and physical modalities including trigger point injections, prolotherapy and CBCT as needed. Cost is \$5000.00.
2. Follow-ups Post-Phase I Treatment includes evaluations every three to six months for the next two years. Fee would be dependent on what types of modalities are required at each appointment, but approximately \$175.00-\$275.00 per session
3. She would need to be assessed and treated by a chiropractor or craniosacral physiotherapist. The number of visits and costs will be determined by the practitioner.
4. Possible MRI cost around \$1000.00 Phase II treatment Since [the plaintiff] has not even started Phase I, I cannot predict whether she will need Phase II treatment. As mentioned earlier, most patients do not need Phase II type of treatment. Future Treatments and Costs
1. The night time orthotic may need to be replaced every 3-4 years since the acrylic will wear down. Fee will depend on the design and type of materials used but would be approximately \$1250.00-\$1450.00.
7. key findings

[75] I find that Accident #1 caused the types of injuries the plaintiff claims (but not to the extent she claims), with the exception of her low back and hip pain. The evidence with respect to her low back and hip pain is not sufficiently clear, convincing, and cogent to prove on a balance of probabilities that Accident #1 (or Accident #2) caused the low back and hip pain.

[76] Dr. Prout opines that the plaintiff "appeared to describe low back pain that does not appear to be attributable to a specific back injury sustained [in Accident #1]".

[77] With respect to the plaintiff's back, Dr. Prout notes in relation to Accident #2 that it "resulted in an increase in the symptoms which had followed [Accident #1] and may have contributed to at least a component of the back symptoms of which [the plaintiff] complains" [my emphasis].

[78] The plaintiff had had low back and hip pain both before and after Accident #1. As noted, on September 22, 2015, the plaintiff told Dr. Green that her low back pain had resolved. I do not find that, on a balance of probabilities, the plaintiff's low back and hip pain was caused by either Accident #1 or Accident #2.

- [79] I find that Accident #2 exacerbated the plaintiff's injuries which had been caused by Accident #1 for no more than approximately two months, with the exception of her anxiety. Her anxiety was heightened by Accident #2 and she remains more anxious than she would have been but for Accident #2.
- [80] The plaintiff's chief concern is her headaches (and head pain). Her headaches (and head pain) have two primary sources, which, in turn are related as part of the body's head and neck workings.
- [81] The first source is the injury to the plaintiff's temporomandibular joint and related muscles, nerves, and bones. Dr. Pirani describes the plaintiff's injury and, in particular, the elongation of the check rein ligaments.
- [82] In making my findings that Accident #1 caused the plaintiff's injury to her temporomandibular joint and related structure, I have given particular weight to Dr. Pirani's observation of check rein ligaments elongation. It is an objective observation with no other probable cause based on the plaintiff's history. The injury also gives an indication as to the significant forces involved in Accident #1.
- [83] The significant forces generated by Accident #1 also help explain the second source of the plaintiff's headaches (and head pain) resulting from the "musculoligamentous dysfunction in the neck region particularly the high cervical region" as Dr. Prout describes.
- [84] The plaintiff does not claim that she suffered a brain injury and Dr. Prout opines that she did not.
- [85] Consistent with Dr. Prout's opinion, the plaintiff's testimony, and the "dead stop" nature of Accident #1, I also find that the plaintiff "suffered musculoskeletal type injuries to the neck and in particular as well to the upper back and shoulder girdle, particularly the left upper trapezius muscle", as more fully described by Dr. Prout in his report.
- [86] I have given little weight to Dr. Claremont's report or her evidence to the extent she opines as to the plaintiff's disability. She relied considerably on the plaintiff's self description. With respect to the temporomandibular joint injury and related aspects and the musculoskeletal cervical neck and upper back injury and shoulder injury, I have found Dr. Pirani's and Dr. Prout's respective reports and testimony very helpful, with one comment.
- [87] My one comment is that the plaintiff, despite the exacting nature of many of the needling treatments she gives requiring both physical strength and mental concentration, has chosen not to use a hydraulic table for her patients based on cost.
- [88] The plaintiff testified that other practitioners at the Core Centre use hydraulic tables. She had had access to a hydraulic table from time to time at OHP. She testified that with a hydraulic bed she less frequently needs to "stoop or bend" and agreed that she saw benefit to her back and neck. She agreed that when she used a hydraulic table it "helped". She said she "would love to have one" and she thinks "it would help [her] body a lot when she is working

and her body positioning while [she is] at work". She further acknowledged that an occupational therapist had told her that as hydraulic table would help to minimize her symptoms.

- [89] Dr. Troy Tater, a chiropractor, owns the Core Centre. He has his own practice at the Core Centre as one of the seventeen practitioners who have space there.
- [90] Dr. Tater testified that he has been a practicing chiropractor for 18 years and has used a hydraulic table "from day one" and that "almost every" other practitioner (other than, say, a psychologist) at the Core Centre does.
- [91] While the cost of a hydraulic table is approximately \$4,000, this amount is relatively small in comparison to the plaintiff's income and having regard to the fact that such equipment will last more than several years and capital cost allowance for income tax purposes may be claimed.
- [92] I find that the plaintiff's stated symptoms as to her headaches, neck pain, and shoulder pain are not as severe as she describes. I find that on a balance of probabilities the plaintiff would have purchased a hydraulic table in the hope of reducing her symptoms if they were as severe as she claims.
- [93] During legal argument, the plaintiff withdrew any amount for a hydraulic table as part of her claim for costs of future care. She was correct to do so. A reasonable person in the shoes of the plaintiff, even without an injury, would have acquired a hydraulic table.
- [94] In cross-examination, the plaintiff acknowledged that two days after Accident #2 the plaintiff completed a "neck disability questionnaire" with the Core Centre. She was treated by Dr. Tater with Dr. Tater preparing the requisite reports for the Insurance Corporation of British Columbia.
- [95] In completing the questionnaire, the plaintiff checked the following box choices from a graduated selection of boxes for ten separate categories: Pain intensity The pain is very mild at the moment Personal care (washing/dressing etc.) I can look at myself normally, but it causes extra pain Lifting I can lift heavy weight but it gives extra pain Reading I can read as much as I want with slight pain in my neck Headaches I have moderate headaches, which come infrequently Concentration I can concentrate fully when I want to with slight difficulty Work I can do as much work as I want to Driving I can drive my car as long as I want with slight pain in my neck Sleeping My sleep is mildly disturbed (1-2 hrs sleepless) Recreation I am able to engage in all my recreation activities, [with] some pain in my neck
- [96] In cross-examination, the plaintiff confirmed that she believed her answers were "true" but they were "just ticks" and "not the whole story".
- [97] While I accept that such questionnaires may not tell the whole story, such questionnaires are designed to elicit information upon which the treating provider may rely. The symptoms ticked in the questionnaire fall short of the plaintiff's testimony at trial.

[98] In sum, the plaintiff has not provided "sufficiently clear, convincing and cogent evidence" to satisfy the Court on a balance of probabilities that her injuries are as severe as she claims. I find that the plaintiff's headaches, neck pain, and shoulder pain, while significant, were overstated at trial.

8. Non-pecuniary damages

[99] Our Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34 sets forth an open list of factors to guide the assessment of non-pecuniary damages:

[46] The inexhaustive list of common factors cited in *Boyd* that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life; I would add the following factors, although they may arguably be subsumed in the above list:
- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163, 2005 BCCA 54).

[100] In *Trites v. Penner*, 2010 BCSC 882, Justice Ker states:

[188] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair and reasonable to both parties: *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 [Andrews]; *Jackson v. Lai*, 2007 BCSC 1023 at para. 134 [Jackson]; *Kuskis v. Hon Tin*, 2008 BCSC 862 at para. 135 [Kuskis].

[189] For the purposes of assessing non-pecuniary damages, fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Andrews*; *Jackson*; *Jenkins v. Bourcier*, 2003 BCSC 388 at para. 87; *Radford v. Drobot et al.*, 2005 BCSC 293 at para. 62; *Kuskis* at para 136.

- [101] The plaintiff seeks an award of \$110,000 to \$180,000 for non-pecuniary damages. The plaintiff cites in support of her submission the following authorities: · Olson v. Ironside, 2012 BCSC 546 (present day value \$112,757); · Miller v. Marsden, 2014 BCSC 2331 (present day value \$118,831); · Badillo v. Bedi, 2015 BCSC 1692 (present day value \$118,381); · Manoharan v. Kaur, 2016 BCSC 692 (present day value \$180,682); and · Gill v. Lai, 2018 BCSC 101, appeal allowed on a separate ground 2019 BCCA 103 (present value \$142,814);
- [102] The defendants say that the appropriate award is \$50,000 for non-pecuniary damages. The defendants cite in support of their submissions the following authorities: · Runghen v. Elkhail, 2009 BCSC 467 (present day value \$48,000); · Parker v. Lemmon, 2012 BCSC 27 (present day value \$50,000); · De Vries v. Poltorak, 2013 BCSC 2527 (present day value \$50,000); · Kelly v. Kotz, 2014 BCSC 244 (present day value \$49,000); · Juelfs v. McCue, 2019 BCSC 1195 (present day value \$65,000); · Soltan v. Glasgow, 2019 BCSC 1527 (present day value \$70,000); and · Spence v. Yellow Cab Co. Ltd., 2019 BCSC 1540 (present day value \$50,000)
- [103] In the case at bar, the plaintiff has suffered the injuries claimed with the exception of her low back (including her right hip and left hip musculoligamentous injuries). As noted, her headaches, neck pain, and shoulder pain, while significant, were overstated at trial.
- [104] Based on the evidence presented at trial, the claims for depressed mood and post-traumatic stress disorder, in my view, fall within the general description of anxiety.
- [105] The plaintiff's sleep disturbance may be caused by any one of a combination of her TMD, muscle tension, headaches, or anxiety.
- [106] As described above, the plaintiff's temporomandibular joint and related injuries are serious with the elongation of her check rein ligaments permanent. The plaintiff's cervicogenic headaches can be severe and debilitating for a greater or lesser period; however, I have found that they are not as frequent, severe, or debilitating as the plaintiff describes. Dr. Prout also states that the plaintiff "does have potential for significantly better control of her pain symptoms".
- [107] The TMD and the cervicogenic headaches have a favourable prognosis. That said, the avoidance or reduction in the severity of her headaches will require careful management by the plaintiff and her medical providers. The elongation of the plaintiff's check rein ligaments is also permanent and will require monitoring and possible further attention after the recommended Phase I (and possible Phase II) treatment.
- [108] I will award \$100,000 in non-pecuniary damages. In assessing the non-pecuniary damages, I have given particular weight to the plaintiff's age, the fact that the injury to her check rein temporomandibular ligaments is permanent, and the fact that the plaintiff's cervicogenic headaches appear permanent although there is the "potential for significantly better control of her pain symptoms". The plaintiff's temporomandibular joint injury has also made her more susceptible to difficulties if she were to be "involved in another trauma, had

a long dental appointment or needed oral intubation for general anesthesia".

9. Future Loss of earning capacity

[109] In *Perren v. Lalari*, 2010 BCCA 140, our Court of Appeal set forth, at para. 32, the rule that there must be a "real and substantial possibility of a future event leading to an income loss" before assessing the loss. The loss may be quantified using the earnings approach or the capital asset approach. The earnings approach is the more suitable approach in the case at bar.

[110] In *Rosvold v. Dunlop*, 2001 BCCA 1, our Court of Appeal stated:

[9] Because damage awards are made as lump sums, an award for loss of future earning capacity must deal to some extent with the unknowable. The standard of proof to be applied when evaluating hypothetical events that may affect an award is simple probability, not the balance of probabilities: *Athey v. Leonati*, [1996] 3 S.C.R. 458. Possibilities and probabilities, chances, opportunities, and risks must all be considered, so long as they are a real and substantial possibility and not mere speculation. These possibilities are to be given weight according to the percentage chance they would have happened or will happen.

[111] The plaintiff calculated her claim for loss of earning capacity based on an earnings approach. She argued that she is required to have two hours of breaks per day in order to rest as a result of the injuries she suffered in the Accidents.

[112] In her written submission, counsel for the plaintiff describes the plaintiff's loss of earnings as follows:

134. [The plaintiff] testified on average her gross hourly revenue per patient is \$110 per hour. The average net hourly revenue per patient is \$79.00. If this Court finds that [the plaintiff] could see four more patients per day the net revenue loss per day is \$316.00

135. Finding a loss of \$316 per day calculates out to \$1,580 per week. Assuming four weeks of vacation per year or working 48 weeks per year the total income loss per year is \$75,840.

136. [The plaintiff] testified that she intends to retire at the age of 65.

137. Applying the multiplier provided by Mr. Benning, the future loss of earning [the plaintiff] will suffer as a result of the crash is calculated as follows: Retire at age 65: $\$75,840 / \$1,000 \times 17,884 = \$1,356,322.56$

[113] During legal argument, it was conceded that the calculation may be in error.

[114] A review of the plaintiff's testimony shows she testified that her gross income per patient visit was approximately \$110 and her net income per patient visit was approximately \$79.

- [115] Defendants' counsel noted that if the average gross income per patient visit was \$110 and the plaintiff saw seven to ten patients per day and worked 48 weeks per year, the plaintiff's annual gross income would be \$184,800 to \$264,000. This range significantly exceeds the reported gross income (\$141,622 in 2018).
- [116] Until August 2019, the plaintiff says that she worked 48 weeks per year. On two days each week she had access to a second room and would see approximately 15 patients on each of these days. On the other three days of the work week, she would see approximately seven patients per day.
- [117] Using the foregoing figures, I calculate the patient visits per year were 2448: 1440 patients (48 work weeks/year x 2 days/week x 15 patients/day) + 1008 patients (48 work weeks/year x 3 days/week x 7 patients/day)
- [118] If the net income per patient visit was approximately \$79, then her current net income would be \$193,392 (2448 patient visits x \$79/per patient visit). As noted, the plaintiff's 2018 net income was \$77,693 (2018 was the last full year of available information). The difference between the plaintiff's net income (even with assuming a reasonable increase in 2019) and the net income using the plaintiff's figures cannot readily be explained.
- [119] In short, the plaintiff has not provided the Court with reliable numbers.
- [120] Disregarding gross and net per patient visit income, the plaintiff has also not shown that her earning capacity has been affected in the way she claims.
- [121] I note that the plaintiff's calculation was based on a six-hour day of work increasing to an eight-hour day of work, which would mean 40 hours of work per week. At trial the plaintiff testified that she was at the Core Centre 44 hours each week. Accordingly, based on taking two hours of breaks per work day, the plaintiff is currently working 34 hours per week. If she were to add two hours of work per day to see four more patients per day, the plaintiff would be working 44 hours each week.
- [122] The plaintiff testified that as of August 2019, she had started to rent two rooms at the Core Centre. There are two advantages. First, the plaintiff testified that in the past on the two days a week that she had access to a second room, she had to usually move the equipment in the second room of the practitioner that usually used the room out of that room and then move her equipment into the room and that this took her time and effort. Accordingly, with her own second room, this trouble is avoided. The second advantage of the plaintiff having her own second room is that she can organize and store her equipment. As the plaintiff's practice has grown and diversified in the treatments she can provide, the plaintiff has acquired further equipment. As an example, she recently acquired an oxygen tank and ozone generator in order to provide ozone injection therapy.

- [123] With the two rooms, the plaintiff says she now books seven to ten patients per day. She says that her total patient visits are about the same. I agree. Assuming ten patient visits per day, the number of patient visits per year would be 2400 (48 work weeks/year x 5 days/week x 10 patients/day).
- [124] I accept the plaintiff's testimony that acupuncture, needling, and most of the other treatments she offers require physical effort and intense mental concentration having regard to the potential risks (say, a misplaced needle insertion causing a stroke or nerve damage) while at the same time keeping the necessary appearance of calmness and competency.
- [125] I reject the plaintiff's testimony that if she is "feeling good", 15 patients a day is not a "big deal" having regard to the physical nature and mental intensity of her practice.
- [126] The plaintiff's move to use two rooms with seven to ten patients booked per day is a sensible approach especially with the ability to offer more types of treatments as a result of her further training she has undertaken over the past several years.
- [127] Like most people, the plaintiff says she does not wish to work on the weekend. She also has her family, which includes by all accounts, a very lively and active eight-year-old son.
- [128] As a traditional Chinese medicine practitioner, the plaintiff keeps charts and clinical records. I also note that Mr. Bannatyne testified that the plaintiff will spend time at home charting.
- [129] The College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia is established under the Traditional Chinese Medicine Practitioners and Acupuncturists Regulation, B.C. Reg. 290/2008, made pursuant to the Health Professions Act, R.S.B.C. 1996, c. 183 [HPA]. To practice traditional Chinese medicine or acupuncture, an individual must be a registrant of the College as the plaintiff is.
- [130] Section 19 of the HPA provides that a College may make bylaws, consistent with the duties and objects of a College under s. 16 of the HPA, that it considers necessary or advisable. This includes bylaws to establish rules regarding the creation and retention of health care records: s. 19(1)(x.1).
- [131] The plaintiff recognized the need to prepare patient charts and records.
- [132] The preparation of charts and clinical notes requires time, effort, care, and concentration, with the time as evidenced by Mr. Bannatyne's observation of the plaintiff preparing charts at home.
- [133] In sum, the plaintiff has not shown that her earning capacity has been affected to the extent or in the way she claims.
- [134] I find that the decrease in earning capacity relates to the need to take treatment for her symptoms and the ongoing management of her symptoms following treatment.

- [135] Dr. Prout opines that the plaintiff "will likely suffer on an ongoing basis from musculoskeletal syndromes in the upper neck and an increased propensity to headaches as a result of the upper musculoligamentous dysfunction". Dr. Prout further states that prescription medication (including botulinum toxin medications) and active exercise therapy may improve the degree to which the plaintiff "will suffer on an ongoing basis from significant headaches".
- [136] Dr. Pirani's recommended course of treatment will require the plaintiff to travel from Kelowna to Vancouver at least weekly for three months and possibly for a longer period if the Phase I Stabilization is not successful. Even with Phase II, there is not an absolute assurance of success. The elongation of the check rein ligaments is a permanent injury.
- [137] The plaintiff will also require psychological counselling to address her anxiety.
- [138] There will be the various appointments with Dr. Pirani and a psychologist. There will also be other yearly regular appointments needed to help manage the plaintiff's symptoms even after treatment (including passive therapies, such as massage and chiropractic treatments), I have assessed that the plaintiff will over the next 22 years lose approximately 120 days of full-day work. A full year of work is 240 days (48 work weeks/year x 5 days/week).
- [139] I find that an appropriate award using the earnings approach is \$40,000 which represents roughly one-half of current net income.
10. cost of future care
- [140] Our Court of Appeal in *Johal v. Meyede*, 2014 BCCA 509 stated that in considering cost of future care, the trial judge should ensure (at para. 44):
- a) an "evidentiary link between the caregiver's assessment of pain or disability and the recommended care";
 - b) "regard for the real and substantial possibility that the expense will be incurred" and that "an allowance for the contingency that the cost may not be incurred"; and
 - c) "the specific amount awarded for each item claimed" is identified.
- [141] In *Riley v. Ristro*, 2018 BCCA 366, Justice Groberman, in writing for the Court of Appeal, stated:
- [102] I acknowledge what was said in *[Kroeker v. Jansen (1995), 123 D.L.R. (4th) 652 (B.C.S.C.)]* about segregated non-pecuniary awards "where the special facts of a case" warrant them. In my view, however, segregated non-pecuniary awards should be avoided in the absence of special circumstances. There is no reason to slice up a general damages award into individual components addressed to particular aspects of a plaintiff's lifestyle. While such an award might give an illusion of precision, or suggest that the court has been fastidious in searching out heads of damages, it serves no real purpose. An assessment of non-pecuniary damages involves a global assessment of the pain and suffering, loss of amenities, and loss

of enjoyment of life suffered by a plaintiff. By its nature, it is a rough assessment and not a mathematical exercise.

- [142] The plaintiff's claim for the cost of future care is comprised of the following: Requirements Cost One Time Expense Phase I Treatment \$5,000 Follow up post Phase I 8 to 4 follow ups at \$175 - \$275 per treatment. \$700 to \$2,200 MRI \$1,000 Psychology 8 sessions per year at \$200 per session. \$1,600 TOTAL \$8,300 to \$9,800 Yearly Costs Night Time Orthotic Every 3 to 4 years up to age 65. \$1,250 to \$1,450 Average of 7 for the work lifespan of 65 Chiropractic 12 sessions per year at \$60 per session up to age 65 Acupuncture 12 sessions per year at \$105 per session up to age 65 Massage 12 sessions per year at \$95 per session up to age 65 House cleaning 3 hours per week at \$30 per hour up to age 65
- [143] For the future chiropractic, massage and acupuncture treatments, the plaintiff uses a multiplier of 17.658. The resulting calculations are: Chiropractic 12 sessions/year x \$60/session x 17.658 = \$12,713 Acupuncture 12 sessions/year x \$105/session x 17.658 = \$22,250 Massage 12 sessions/year x \$95/session x 17.658 = \$20,130
- [144] Similarly, the plaintiff's calculation for future house cleaning assistance is as follows: 48 work weeks/year x \$90/week x 17.658 = \$76,282
- [145] The plaintiff's total cost of future care calculation is: Present costs \$8,300 to \$9,800 Future costs Chiropractic \$12,713 Acupuncture \$22,250 Massage \$20,130 House cleaning \$76,282 TOTAL \$139,675 to \$141,175
- [146] I believe that the plaintiff may have overlooked the night time orthotics. Since the cost of an orthotic was a general estimate and having regard to a low present value, I assess the current cost to be \$10,150 (\$1,450 x 7 night time orthotics).
- [147] I accept the claim for Dr. Pirani's planned Phase I treatment as falling within the three Johal criterion. With respect to the related MRI, I find having regard to the precise nature of the realignment of the plaintiff's jaw, the MRI expense will most probably be incurred.
- [148] I also accept Dr. Pirani's recommendation of night time orthotics and that these fall within the Johal criterion.
- [149] With respect to the costs of psychological counselling, it is clear that the Accidents caused the plaintiff to develop particular anxiety. She has already had two sessions and the eight sessions claimed for future care as part of ten sessions based on therapy recommended by Dr. Claremont.
- [150] Dr. Claremont also recommended 12 sessions per year of chiropractic, massage, and acupuncture treatments for the remainder of the plaintiff's work life. I note that Dr. Prout favoured also active rehabilitation (he does not recommend discarding passive therapies). I find that Dr. Claremont's recommendation fall within the Johal criterion and that the estimated costs are supported by the evidence.

[151] I find that the plaintiff's claim for house cleaning services do not meet the Johal criterion. The plaintiff can physically do the usual stretching, lifting, and moving associated with house cleaning. I acknowledge that the plaintiff may experience pain. Following the Riley approach, this pain and associated loss of enjoyment of life are included in my general award for non-pecuniary damages. I also note that Dr. Prout generally recommended active rehabilitation. House cleaning is consonant with such a view.

[152] In sum, the total award for the cost of future care is: Phase I treatment \$5,000 Follow-ups post Phase I \$2,200 MRI \$1,000 Psychology \$1,600 Night time orthotics \$10,150 Chiropractic treatments \$12,713 Acupuncture \$22,250 Massage \$20,130 TOTAL \$75,043

[153] I have used the high range figures for "follow-ups post Phase I" visits with Dr. Pirani because of the complexity of the prognosis, and although favourable, near full resolution is not a certainty.

11. Special damages

[154] The plaintiff claims \$4,735 in special damages.

[155] In written submissions, defence counsel submits:

256. The List of Special Damages sets out a claim in the amount of \$4,735.13 [Exhibit 15]. The test for any expense claimed as a special damage is reasonableness.

257. The defendants take the position that the following expenses are neither medically justified nor reasonable:

- Pilates instruction <\$682.50>
- OHP interest payment <\$136.90>
- Myers IV therapies, Wellness IV treatments, injection/IV Therapies, L-Lysine injections, Glutathione IV injections <657.97> Total: <\$1,477.37>

258. The defendants agree that the balance of the expenses listed, in the amount of \$3,257.76 are compensable as special damages.

[156] I agree with and adopt defence counsel's submissions. The excluded claims have not met the requisite proof of reasonableness and medical justification.

[157] In sum, the plaintiff is awarded \$3,258 in special damages.

12. conclusion

[158] In sum, the plaintiff is awarded the following:

- a) Non-pecuniary damages: \$100,000
- b) Future loss of earning capacity: \$40,000
- c) Cost of future care: \$75,043

d) Special damages: \$3,258 TOTAL: \$218,301

13. costs

[159] If the parties wish to speak to costs, I ask that within 90 days they arrange through Supreme Court Scheduling a 9 a.m. 55-minute hearing before me. "Funt J."

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