

CANADA / JUDGMENT

Nguyen v. Zeng

2025 BCSC 1903

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1903 Nguyen v. Zeng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nguyen v. Zeng,

2025 BCSC 1903

Date: 20251001

Docket: M179113

Registry: Vancouver

Between:

Nancy Nguyen

Plaintiff

And

Wu Ling Zeng

Defendant

- and -

Docket: M195948

Registry: Vancouver

Between:

Nancy Nguyen

Plaintiff

And

Christopher Deacon

Defendant

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

December 9-13, 16-20, 2024

and February 21, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 1, 2025

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I. INTRODUCTION

[1] This personal injury case revolves around three motor vehicle accidents that occurred on the following dates:

- 1) November 22, 2015 (the "November 2015 MVA");
- 2) May 28, 2017 (the "May 2017 MVA"); and
- 3) August 21, 2017 (the "August 2017 MVA").

- [2] The November 2015 MVA occurred in Burnaby, British Columbia, as did the May 2017 MVA. The August 2017 MVA occurred in Washington State, involved an American defendant in an action not before this Court, and was the subject of an arbitration award on June 2, 2023.
- [3] Liability has been admitted by the defendants involved in both the November 2015 MVA and the May 2017 MVA. In both these actions, the plaintiff, Ms. Nguyen, discontinued her claim against some other named defendants. The November 2015 MVA and the May 2017 MVA were joined together with the consent of the current defendants on December 31, 2019.
- [4] Ms. Nguyen claims she has continuing and significant physical and cognitive difficulties arising from the November 2015 MVA, the May 2017 MVA, and the August 2017 MVA (together, the "Subject MVAs") and that she continues to suffer from headaches, anxiety, and low moods arising from those accidents, justifying significant damages. She argues the May 2017 MVA and the August 2017 MVA are indivisible and exacerbated "cognitive and psychological sequelae" caused by the November 2015 MVA.
- [5] The defendants admit Ms. Nguyen suffered soft tissue injuries in the November 2015 MVA and that the May 2017 MVA exacerbated existing injuries. However, the defendants submit that Ms. Nguyen's soft tissue injuries were substantially resolved by the time of the May 2017 MVA, that her injuries in the May 2017 MVA were minor in nature, and that they did not cause and are not responsible for the injuries or symptoms Ms. Nguyen sustained in the August 2017 MVA. The defendants also assert that Ms. Nguyen recovered to a very significant degree from each of these accidents and that her injuries and symptoms have substantially resolved. Further, the defendants argue that her symptoms have not delayed or compromised the course of her career trajectory as claimed.
- [6] The issues before me are:
- 1) the nature and extent of Ms. Nguyen's injuries arising from the Subject MVAs, as well as any pre-existing conditions or vulnerabilities;
 - 2) causation and whether the physical and mental injuries arising from the November 2015 MVA and the May 2017 MVA are indivisible from the August 2017 MVA;
 - 3) the nature and scope of her non-pecuniary damages;
 - 4) loss of past and future earning capacity; and
 - 5) cost of future care.
- [7] The parties have reached agreement on the quantum of special damages at \$12,549.88.
- [8] I address each of these outstanding issues in their respective order, following a review of the evidence.

II. BACKGROUND

- [9] In summarizing the evidence before me, I have not referred to all the evidence or all the witnesses who testified. I have, nevertheless reviewed and assessed the entirety of the evidentiary matrix before me.

A. Ms. Nguyen's Circumstances Prior to the Accident

- [10] Ms. Nguyen was born in Nanaimo, British Columbia in 1992. She is a first generation Canadian whose parents fled Vietnam as refugees. She describes being raised in a loving and supportive environment as a child.
- [11] Ms. Nguyen knew as early as her high school years that she wanted to work in the healthcare field and not in the "front lines". In 2014, she graduated with a Bachelor of Science at the University of Victoria with a degree in Health Information Sciences. She described her university courses as a mixture of computer science, business, social sciences, and healthcare.
- [12] At the time of the November 2015 MVA, Ms. Nguyen was working full time as a Systems Analyst for the Provincial Health Services Authority ("PHSA"). She was also working part-time about 20-30 hours per month as a consultant for the Vancouver Division of Family Practice.
- [13] Ms. Nguyen testified that prior to the November 2015 MVA, she liked to "spend a lot of time" with her nephew, taking him to the park and community events. She also did fitness classes, went hiking, and sometimes played tennis. She enjoyed socializing with her friends and co-workers and professional "networking".
- [14] In 2009, Ms. Nguyen was a passenger in a motor vehicle accident, sitting behind the driver. The accident occurred when their vehicle was "T-boned" as the driver of her car was turning. Her vehicle was struck "closer to the back door" and spun around twice by the force of the impact. Ms. Nguyen testified that her hip was bruised from the force of the seatbelt and that by 2012 or 2013, she had fully recovered. She also suffered a neck and upper back injury in this accident, which resolved to a considerable extent.
- [15] During cross-examination, Ms. Nguyen acknowledged lacking confidence and experiencing related anxiety before the November 2015 MVA. She recalled that while she was at university she did not feel she was "meeting expectations of [herself]".
- [16] Ms. Nguyen acknowledged suffering from headaches involving light sensitivity prior to the November 2015 MVA.

B. The Subject MVAs

1. The November 2015 MVA

- [17] In the November 2015 MVA, Ms. Nguyen was the single passenger in the front seat of a Mercedes SUV driven by a friend. She was wearing a seatbelt. This accident occurred when a vehicle, a few vehicles in front of her vehicle, came to a sudden stop. The vehicles in front of theirs also suddenly stopped. The vehicle Ms. Nguyen was in also managed to stop without hitting the car in front of them. However, their vehicle was rear-ended by the car immediately behind them, which Ms. Nguyen described as "a Toyota or a Honda Civic or Corolla".
- [18] Ms. Nguyen recalled that her body was thrust forward by the impact, and that her head hit the headrest behind her. Ms. Nguyen testified the "headrest" behind her "snapped". She later testified that the headrest was "bent". Ms. Nguyen indicated that it was her friend who told her about the condition of the headrest. Her friend did not testify. I find there is no clear or reliable evidence in regard to the condition of the headrest; that is, whether it was "bent" or "snapped" or how it was specifically affected by the collision.
- [19] Ms. Nguyen confirmed she did not lose consciousness.
- [20] Ms. Nguyen testified that the front of the other vehicle that hit the vehicle she was in was "pushed in" and the defendant's door was jammed as a result of the accident.
- [21] The police and ambulance were called to the scene of the November 2015 MVA. She and her friend did not go the hospital at that time. Ms. Nguyen testified that the paramedic at the scene "asked if we needed to go to the hospital" and that "we said we didn't think we needed to". Ms. Nguyen and her friend then drove the driver of the vehicle, who had rear-ended their vehicle, home.
- [22] Ms. Nguyen recalled being frustrated by the accident. She recalled that it occurred on a Sunday and that she wanted to get back home to do some work as she had recently started a new job.
- [23] Ms. Nguyen testified that she felt tingling in her face and was nauseous, and that that is why she decided to go to the hospital that night. Ms. Nguyen testified that she also had "pain in her chest" and "may have felt tenderness" in her neck and back but her symptoms, including stiffness in her neck and back, "settled in" the "next couple of days" after this accident. She did not testify about persisting chest pain.
- [24] Ms. Nguyen recalled that immediately after this November 2015 MVA, she felt like she was "in shock". Later that same day, she and the driver of their vehicle decided to go to the Vancouver General Hospital ("VGH") emergency ward. Hospital records provide that the physical examination revealed tenderness at the sternum and unspecified tenderness in the right shoulder. Ms. Nguyen's Glasgow Coma Scale was 15/15 (which was later confirmed to be a normal result). Counsel for Ms. Nguyen noted that the physician who examined Ms. Nguyen described the incident as a "low speed MVC" and made no definitive medical diagnosis during this visit.

- [25] On cross-examination, Ms. Nguyen acknowledged that she remembered the events of the November 2015 MVA and did not have any related amnesia.
- [26] Ms. Nguyen recalled that she took "a couple of days off" after the November 2015 MVA and went to a medical clinic later that week. She said, at that time, she "believed" that she was feeling sore throughout her body and was groggy and dizzy. She testified that she "thought" she was having trouble with "sleep and nausea", and that she felt sensitive to light. She described pain in her low back, upper back, and neck. She could not recall if she had "pain in her head". She thought the doctor gave her a muscle relaxant.
- [27] Ms. Nguyen went back to the doctor within a week of the November 2015 MVA but she was not "sure when", although she testified she went to see her doctor about these symptoms "quite regularly" during the first six months after the November 2015 MVA.
- [28] Ms. Nguyen testified that after taking just a couple of days off work after the November 2015 MVA, she was having "trouble". She described how returning to work was challenging: the office lights strained her eyes and both her lower and upper back were sore. She was continuing to work at both of her full-time and part-time jobs but was worried about her productivity. Ms. Nguyen testified that she became concerned about her "cognitive load".
- [29] Ms. Nguyen testified that at a doctor's visit at the same clinic in late November, her doctor (Dr. Andrew Wong) suggested she take "a couple of weeks off". She did so in both of her jobs, following which Ms. Nguyen began a graduated return to work at both jobs. Although the evidence Ms. Nguyen provided regarding exactly how much time she took off to recover in respect to both her jobs was not clear, she testified that she returned to full-time work in April 2016.
- [30] Ms. Nguyen testified that a month or two after the November 2015 MVA, she was having trouble sitting or standing for long periods, her low back felt weak, and she needed to sit on cushions. She "sometimes" had trouble falling asleep if she had a headache because she "could see lights", although she explained that once she fell asleep, she stayed asleep.
- [31] In December 2015, Ms. Nguyen recalled going to see a massage therapist for her symptoms and that it was challenging for the message therapist because she was "so sensitive". While she reported worsening mid-back pain on the left side, she also reported partial improvement in her cognitive symptoms.
- [32] With respect to her part-time consulting work at the Vancouver Division of Family Practice, Ms. Nguyen testified that she did not work in that consulting role for about a month after the November 2015 MVA and then she subsequently reduced her hours by one to two hours per week. She testified that she again reduced her hours by about 50% and completed her contract on March 31, 2016. On cross-examination, Ms. Nguyen acknowledged that she extended this contract after March 31, 2016 for an additional one-year term and she completed this contractual commitment.

- [33] In the months that followed the November 2015 MVA, Ms. Nguyen continued to see a massage therapist. She also started "active rehab" with a kinesiologist and a chiropractor. She acknowledged improvement in her symptoms.
- [34] In April 2016, Ms. Nguyen succeeded in obtaining a higher-level position, graduating from a "Systems Analyst" with the Provincial Health Services Authority to a "Senior Business Analyst" at BC Children's Hospital. Her new job was a higher paying job with greater responsibility.
- [35] In July 2016, Ms. Nguyen was at a meeting at work when she started to feel "like she was going to pass out". She was experiencing a migraine: her "heart was slow" and she could not keep her eyes open. Her co-worker drove her to the emergency ward at VGH where she was treated for the migraine.
- [36] In the summer of 2016, Ms. Nguyen was also continuing to experience tension in her low back. She continued her kinesiology, physiotherapy, and massage treatments.
- [37] In the fall of 2016, Ms. Nguyen was assessed and started to see a psychologist, Dr. Laura Klubben. Her lawyers recommended Ms. Nguyen to also see an occupational therapist, which she did. Ms. Nguyen described feeling "low confidence and tearful" when she first spoke to Dr. Klubben in the fall of 2016. She testified that was also having headaches and neck and upper and lower back pain at this time.
- [38] Ms. Nguyen testified that in the months that followed, she began feeling better physically in her "neck, back, and shoulders". She testified, however, that she still had "cognitive issues", which she described as headaches, with concentration, focus, and memory issues. Ms. Nguyen acknowledged feeling better after seeing Dr. Klubben.
- [39] During cross-examination, Ms. Nguyen was taken to Dr. Steven Helper's expert report. Dr. Helper was the physiatrist retained by Ms. Nguyen to do a medical assessment and provide an expert report (whose report I discuss later in these Reasons for Judgment ("Reasons")). At page 32 of his expert report, Dr. Helper refers to the November 2015 MVA and states: "[] in the first six months her low back pain improved considerably. It did not resolve fully but would be described as mild". Ms. Nguyen agreed that this is what she reported to Dr. Helper on September 20, 2018.
- [40] Ms. Nguyen was also taken to Dr. Helper's expert report where he records her self-report regarding what he referred to as "her perceived concussion symptoms" (as of September 20, 2018):

Ms. Nguyen states that much of her perceived concussion symptoms resolved with the first six to eight months [of the November 2015 MVA]. She states that she was 80% recovered. She had minor residual issues with headaches, decreased focus, decreased reading ability, and behavioural symptoms, such as irritability at tearfulness.

- [41] On cross-examination, Ms. Nguyen agreed that she reported she had recovered 80% from her perceived concussion symptoms within six to eight months of the November 2015 MVA. She agreed this was an accurate statement. She also agreed that her recollection of her symptoms after her November 2015 MVA was better in 2018, when she met with Dr. Helper, than it was at the time of trial.
- [42] On cross-examination, Ms. Nguyen stated she could not recall what treatment she pursued regarding her perceived concussion. When taken to her medical records, these records showed that she only attended one two-hour group session on January 4, 2016, which was an information and education session at the concussion clinic. While Ms. Nguyen complained of concussion symptoms, she did not follow-up on her treatment at the concussion clinic and did not go to the concussion clinic again after her initial information session.
- [43] Ms. Nguyen acknowledged a case note from the concussion clinic, dated November 18, 2016, which states that Ms. Nguyen "had not contacted the clinic with further concerns for over three months and will therefore be discharged from the clinician's case load". Ms. Nguyen agreed she was discharged after not contacting the concussion clinic. While she eventually acknowledged under cross-examination that she went to only the first group session on November 18, 2016, when asked why she only went to one session, she stated that she "had a number of care providers back then and was seeing anyone that was recommended or scheduled, and so I can't answer that question, I guess". I found that, at times throughout Ms. Nguyen's testimony, her memory was rather selective depending on whether it benefited or did not benefit her case. She tended to remember what buttressed her case and to not remember what did not. This is such a time.
- [44] On cross-examination, Ms. Nguyen acknowledged that her driving anxiety did not prevent her from driving or being a passenger in vehicles.
- [45] Ms. Nguyen testified that before the May 2017 MVA, she had "definite improvements in recovery" with her back, neck, and shoulder. She also acknowledged improvements in the frequency and intensity of her headaches.

2. The May 2017 MVA

- [46] At trial, Ms. Nguyen described the May 2017 MVA as a minor event of relatively insignificant consequence.
- [47] Ms. Nguyen's then boyfriend (now husband) was driving and Ms. Nguyen was a passenger in the front seat when this collision occurred. Ms. Nguyen was wearing a seatbelt. Ms. Nguyen testified that they were driving in the left lane, signalled to the right and crossed lanes, turning abruptly. She recalled being hit from behind on the back right passenger side while turning around the corner. Ms. Nguyen testified that they were travelling at a low speed when they turned onto a side street with no stop sign.

- [48] Ms. Nguyen added that "there was some damage to our vehicle" but that it was "not super visible for me", although the autobody shop said there was some damage.
- [49] Ms. Nguyen testified she felt frustrated because she was starting to feel better when this accident occurred. She stated that she felt like she "had whiplash in [her] neck" but that her head did not hit anything.
- [50] Ms. Nguyen described the May 2017 MVA as "very minor" compared to the November 2015 MVA. She testified that she did not feel the same symptoms for the same amount of time, and that this accident was "not memorable to [her]".
- [51] Ms. Nguyen testified that the pain she felt from the May 2017 MVA was "pretty temporary". She added that she did not think she saw any doctors or a physiotherapist in regard to the May 2017 MVA. She also did not see a "think that any of her [treatment] modalities" were specific to that accident, although she noted she was still seeing a massage therapist and kinesiologist. Ms. Nguyen added that the physiotherapist treatments "might have been just about finished" at the time of the May 2017 MVA.
- [52] Ms. Nguyen saw Dr. Wong on June 30, 2017. Dr. Wong's clinical records do not refer to the May 2017 MVA. Ms. Nguyen reaffirmed that she did not think that any of the kinesiology, massage, physiotherapy, or occupational therapy treatments she received related to the May 2017 MVA. She also confirmed that her physiotherapy and occupational therapy treatments had ended by June 2017.

3. The August 2017 MVA

- [53] Ms. Nguyen was the front seat passenger in the August 2017 MVA that occurred in Washington State. She testified that they were travelling home from Seattle and were stopped in traffic when their vehicle was hit from behind by another car. She was wearing a seatbelt.
- [54] Ms. Nguyen testified that her "body went side to side" and that she did not "believe there was visible damage to vehicle". She and other passengers in her car, four in total, commenced an action in Washington State against a Washington State driver and the matter went to arbitration. Ms. Nguyen testified she received compensation of around \$18,000.
- [55] An Agreed Statement of Facts provides, in part, as follows:
13. Ms. Nguyen was awarded by the arbitrator:
- a) \$3,666.61 USD for her Medical Expenses;
 - b) \$1,036.32 USD for her Ministry of Health subrogation;
 - c) \$18,000 USD for her general damages;
 - d) \$3,382.24 USD for her past wage loss;

- e) \$248.USD for her statutory attorney fees and costs.
- [56] The arbitrator's decision was dated June 1, 2023. At page 13 of Arbitrator Bradford Kogut's decision, he states that each plaintiff did not meet his or her respective burden of proof regarding his or her respective claims for "future loss of income, and/or loss of raise in income, and/or future medical expenses". Accordingly, while these claims were made, they did not yield any damage award.
- [57] Ms. Nguyen recalled that after the August 2017 MVA, they drove home to Vancouver. They did "take a break" on the way home by getting out of their car, stretching, and getting snacks at Walmart.
- [58] Ms. Nguyen testified that, within a day or two of the August 2017 MVA, she went to a medical clinic. She testified that she experienced soreness in her neck, back, and right shoulder, as well as an increased number of headaches. At work, she testified that she had trouble remembering tasks or conversations and had difficulty focusing. She also testified that she "may have" bruised her knees.
- [59] Ms. Nguyen agreed that she sought treatment with greater frequency after the August 2017 MVA, particularly physiotherapy and kinesiology treatments. She also recalled going for trigger point injections with Dr. Ravi Dhanoa at MuscleMD. Ms. Nguyen stated that one set of injections were administered after the August 2017 MVA and before February 2018, and another set were administered later, although she was unclear on the timing of this second set of injections.
- [60] Ms. Nguyen acknowledged, and did not dispute, the portion of Dr. Helper's expert report that stated that she reported developing "thoracolumbar back pain" on the right side after the August 2017 MVA.
- [61] Ms. Nguyen also testified to experiencing pins and needles and tingling after the August 2017 MVA that would "come and go" but were not prominent. She said she had chest pain after the August 2017 MVA but said she was "not sure" if it persisted. She could not recall.
- [62] Ms. Nguyen testified that it was after the August 2017 MVA that she "started going to physio" again, as recommended by Dr. Wong. Ms. Nguyen also went for chiropractic treatment the day after the August 2017 MVA. She recalled that she thought she "only went to chiropractor a few times" after the August 2017 MVA due to "stiffness" in her back.
- [63] Ms. Nguyen also went back for a massage treatment two days after the August 2017 MVA and noted this massage "may" have been treating her exacerbated injuries. She added that she also did "active rehab" as well as trigger point injections.

- [64] Mr. Michel Singer, a Senior Project Manager with BC Cancer Society, was called as part of Ms. Nguyen's case. He was Ms. Nguyen's immediate supervisor, commencing in the spring of 2016, noting she was "assigned to [his] day-to-day activities". Part of Ms. Nguyen's job responsibilities were to keep a business record of what Mr. Singer describe as a "lot of meetings" and to also work with him to "migrate patient information". He also described this work as gathering and analyzing "a lot of information".
- [65] Mr. Singer testified that Ms. Nguyen "was very good and very fast" in 2016 until "the summer of 2017". He described Ms. Nguyen's work as "great" during this time frame. He specifically testified that Ms. Nguyen "was very good" until the summer of 2017 when she started complaining of headaches and vertigo, and said she "did not feel good". He accommodated Ms. Nguyen but found her work performance changed; she was not attending meetings, was not "capturing all notes", and was not prepared for meetings. Mr. Singer testified that Ms. Nguyen was not fulfilling her duties and work expectations. On cross-examination, Mr. Singer confirmed he was not aware that Ms. Nguyen was in a motor vehicle accident in 2015.
- [66] Mr. Singer confirmed he has stayed and worked in the same position of Senior Project Manager for 15 years and is currently 57 years old.
- [67] Ms. Jeannie Gandham was also called by Ms. Nguyen. She has been a management consultant in the healthcare field for over 20 years. Ms. Gandham first met Ms. Nguyen in October 2017 while Ms. Gandham was working as a business analyst overseeing a construction project at BC Children's Hospital. This project completed in December 2017 and was very successfully.
- [68] Ms. Gandham testified that " [Ms. Nguyen] did great" in relation to her specific project, which was to develop a baby milk safety system, and that it "went live with no issue". Ms. Gandham testified that due to the success of the project and its opening without a hitch that "it would have been a big opportunity for everybody on the project [] to get promotions", including Ms. Nguyen. Ms. Gandham testified that despite doing "great" on this work, Ms. Nguyen presented as very timid and shy. It was Ms. Gandham's view that Ms. Nguyen did not advocate for herself and lacked confidence.
- [69] Ms. Gandham testified that Ms. Nguyen's choice after the project "to take an IM Lead role" was really a lateral move, not a promotion, and that she was "shocked" that Ms. Nguyen chose that job. Ms. Gandham stated that, as Ms. Nguyen's mentor at that time, this choice in position would not have been what she would have advised Ms. Nguyen to take. Ms. Gandham was of the view that Ms. Nguyen had the opportunity and ability to take on more senior roles than the IM Lead role and could have become a consultant and worked in a more senior and higher-paying role.
- [70] Ms. Gandham agreed on cross-examination that Ms. Nguyen avoided more senior roles even though she had the ability to do work. Ms. Gandham also agreed that Ms. Nguyen did not take on more senior roles because she lacked self-confidence.

- [71] As indicated by Ms. Gandham, in February 2018, Ms. Nguyen completed her contract as a Senior Business Analyst at BC Children's Hospital and began working that same month as an "IM Lead - Medical Imaging, Cardiology, and Biomedical Engineering" ("IM Lead") at Fraser Health Authority. While it is not clear what Ms. Nguyen actually earned in this full-time position, her employment income indicated she earned about \$1,100 more in 2018 (i.e., \$78,163) than she did in 2017. Ms. Nguyen described her job as an IM Lead as an "easier job" than her previous job at BC Children's Hospital but noted it was at the same Level 7 salary scale as this previous job with a salary range between \$67,718 and \$97,555 for "Senior Analyst/Systems Analyst".
- [72] Ms. Nguyen described the workspace at her new 2018 job "as ideal". She had a "sit-stand desk" with good ergonomics and her workload "was lower". She confidently stated that she "was able to do [her] job well", remarking that "it was a choice to move into the role of IM Lead role at level 7".
- [73] Ms. Nguyen testified that in May 2018, she was recovering from her lower and upper back and neck injuries. She explained that after 2017, she "still felt it" but the symptoms were "more manageable". Accordingly, her symptoms continued to improve after 2017.
- [74] She testified that as IM Lead she had "less cognitive issues". She stated that she thought this was because she had a "lower workload". Ms. Nguyen added that she "may have had" concentration and focus issues during this time but her testimony was somewhat tentative. Ms. Nguyen also testified that, as of May 2018, she thought she experienced a "resolution to her light sensitivity"; that is, while still having dull headaches, they were not as severe as before.
- [75] In the spring of 2018, Ms. Nguyen enrolled in a program at Langara College to earn a Project Management Professional Certificate (the "Certificate"). She took the course for four months from April to August 2018 on a part-time basis. She continued working at her full-time job as an IM Lead, noting that it counted towards the Certificate's necessary field work requirement, although the Certificate program involved additional self-study. Ms. Nguyen completed the Certificate program in October 2020 after writing a four-hour exam (with a break in between). She received the Certificate at that time.
- [76] In 2018, Ms. Nguyen also continued counselling with Dr. Klubben. She also went to what she referred to as "driving therapy" with Ms. Maureen Woodward. Ms. Nguyen described the driving therapy with Ms. Woodward as beginning with Ms. Woodward driving her for about two sessions, followed by Ms. Nguyen driving the car with a different instructor present. The therapy entailed driving around for an hour while talking about how she was feeling. Her instructor would monitor her reactions. They would also do breathing exercises before and after the driving sessions. Ms. Nguyen would drive with the instructor next to her. During her testimony, Ms. Nguyen remarked that she "did not think she knew" she was experiencing depression at that time and thought the idea came from Dr. Klubben, although she remembers experiencing anxiety. She added she "may have had concentration and focus

issues" but, again, she was not clear about the timing.

[77] While Ms. Nguyen's described her full-time workload as IM Lead as being easier and a "choice", in addition to the Certificate program, Ms. Nguyen also began two new businesses in 2018. One of those businesses was called "In.press". Ms. Nguyen described the second business as a "shopify business". When under cross-examination, Ms. Nguyen could not identify how much time she spent on these businesses, although she did testify that she spent less time on the businesses in 2019 and 2020 than she did in 2018. Notably, this is another example, among others, of what I assessed as Ms. Nguyen's rather selective memory. Ms. Nguyen did not specify or estimate how much income she earned from these businesses, although she indicated that they were not profitable.

[78] In addition to her full-time work and her two businesses, the Agreed Statement of Facts state that Ms. Nguyen was engaged in continuous volunteer positions between 2017 and September 2023 with Emerging Health Leaders, including being the:

- Board Executive-Membership Coordinator (one year);
- Director of Partnerships (two years);
- Vice-Chair (one year);
- Co-Chair (two years); and
- Past Chair (nine months).

[79] Ms. Nguyen stated that since 2017, she dedicated about four to eight hours a month to her volunteer work, and had "odd months" where she volunteered six to twelve hours of her time.

[80] In March 2019, Ms. Nguyen completed her previous IM Lead contract work. That same month, she started a new contract as a "Workstream Lead - IM Facilities Redevelopment" at Fraser Health Authority ("Workstream Lead"). Ms. Nguyen also describes this job as a "lateral move" which she intentionally chose, again at a level 7 pay scale, although in 2019, Ms. Nguyen's employment income was about \$3,000 less than in 2018. The reason for this discrepancy is not clear on the evidence before me.

[81] The Workstream Lead contract spanned the period between March 2019 and December 2020. In 2020, Ms. Nguyen's employment income increased to \$83,811. Ms. Nguyen testified that she "could handle" the role of Workstream Lead. She explained that the amount of engagement with other teams grew, she was working with different teams, and she was "getting back to facilities development". Ms. Nguyen stated that her accident-related symptoms were "similar" during this time, although the evidence is not clear what this entailed.

- [82] Ms. Nguyen testified in cross-examination that she may have had some difficulties with isolation during the COVID-19 pandemic. She reported to her psychologist, Dr. Klubben, that she experienced increased depression symptoms due to the pandemic in late 2020 and early 2021, describing her "mood was low" and that "she cried a few times". She stated that she felt lonely throughout the day, that she had less energy, and that there were a "few times" that she lacked motivation to get up in the morning, so she took those days off work. Ms. Nguyen testified that she had difficulty sleeping "a couple of times" due to anxiety that related to work and family health issues.
- [83] In December 2020, Ms. Nguyen testified that she competed for and took "a higher step up" in her employment position. She moved to a contract position related to the new St. Paul's Hospital facility. Specifically, from December 2020 to September 2023, Ms. Nguyen worked at Providence Health Care as the "Project Manager, New St. Paul's Redevelopment Project". This position was at a higher pay scale, Level 9, at \$110,000 annually.
- [84] Ms. Nguyen testified that while she was at work five days a week, being a Project Manager was "a really big learning role" with lots of reading. She testified that she struggled with remembering all the content as it was a very complex job. She described feeling "imposter syndrome" and explained that while she was very confident as an IM Lead and Workstream Lead, her confidence in her role as Project Manager was low. She stated that the tools she had previously learned such as self-talk techniques, breathing techniques, and mindfulness assisted her when she started as Project Manager.
- [85] On cross-examination, Ms. Nguyen acknowledged that on January 16, 2023, she was notified by letter of what she agreed was an exceptional increase in her salary, retroactive to April 2022, of \$114,049.00. Shortly afterward, her salary was increased again, retroactive to August 2022, to \$121,951.
- [86] Ms. Nguyen worked as a Project Manager for the New St. Paul's Redevelopment Project for two years and ten months until September 2023 when, as she testified, she "moved up" again to the position of "Program Manager, New St. Paul's Hospital Project". This latest contract is at a Level 10 pay scale. This job is scheduled to continue into 2027.
- [87] Ms. Nguyen was still working in this same position at the time of trial. Nevertheless, Ms. Nguyen received another pay increase to \$144,542.20 on September 5, 2023. Although Ms. Nguyen stated she could not recall whether she had another salary increase since 2023, her counsel confirmed that she did in fact receive a salary increase in 2024 to \$150,262. This, I find, is another example of Ms. Nguyen's rather selective memory.

- [88] Ms. Nguyen testified that, in this role as Program Manager at the New St. Paul's Hospital Project, she had less responsibility over specific projects, yet had responsibility at "a higher level". She described the job as having more content for her to look at and said that, because of the amount of content she was required to review, she had to rely on notes and others to remind her of that content. She said this type of reliance was a function of her perceived memory and concentration issues.
- [89] Ms. Nguyen testified that she reports "to a level 11", adding this person "often worked well over 8 hours". She described herself as a person that "requires more rest". Still, at her current job, Ms. Nguyen also testified that she works longer hours. She works from home three days a week but when she is in the office the other two days a week, she leaves her house "at 6:00 or 6:30 am" and is not home until about 18 hours later.
- [90] Ms. Nguyen testified that in the last year, a director role became available on Ms. Nguyen's team. She testified that she would have liked to apply for this job but decided not to apply. She explained that she felt she was not ready to take on the responsibility of the workload or hours required for this role or to lead a large portion of the team. She described the director position as a high stress position and felt that she could not compete with the other people who would have applied for the position. She said she felt sad about this.
- [91] Nevertheless, in 2023, Ms. Nguyen was awarded the "Emerging Leader of the Year Award" for her work on the New St. Paul's Hospital Project.
- [92] Ms. Nguyen testified that currently she sees a physiotherapist and acupuncturist only when she has "flare-ups". She regularly pays out of pocket for massage therapy. She reports she still has headaches, although I note that this evidence is inconsistent with what she reported to Dr. George Medvedev.
- [93] Ms. Nguyen has decided to continue seeing Dr. Klubben. She testified she will continue seeing her every other month as she does now. She testified that having to "open up" and think about "all the things [she] has dealt with over the years makes [her] feel a little sad".
- [94] On cross-examination, when taken to Dr. Helper's expert report and his record of her self-reports, Ms. Nguyen agreed that at the time she saw Dr. Helper on September 20, 2018, she rated her neck and upper back pain as a 1-3 out of a scale of 10.
- [95] Ms. Nguyen also acknowledged that she may have reported to Dr. Medvedev that her headaches had resolved at the time of his assessment of her on September 2, 2021. She acknowledged her memory of her symptoms at that time would have been better than it was at trial.
- [96] Dr. Medvedev affirmed that, at the time of his examination of Ms. Nguyen in 2021, Ms. Nguyen reported that her headaches had resolved, she had residual anxiety relating to driving, and while she experienced a period of depression, she attributed her sadness to diminished cognitive performance, which had also resolved. Ms. Nguyen testified that she did not recall reporting this information to Dr. Medvedev but agreed that her memory of

what she reported of her symptoms at the time of her assessment with him in 2021 was better then than it is now.

[97] Ms. Nguyen currently exercises and keeps active. She has taken High Intensity Interval Training classes, machine-based Pilates classes, and cross-fit training.

C. Expert Witnesses: Ms. Nguyen's Injuries

[98] Several expert witnesses were tendered by each party regarding Ms. Nguyen's physiological and psychological symptoms. Their evidence is summarised in the next section of these Reasons.

1. Dr. Stephen Helper, Physiatrist

[99] As noted earlier in these Reasons, Dr. Stephen Helper was retained by Ms. Nguyen and was qualified as a physiatrist. He opined on the nature, extent, and duration of Ms. Nguyen's injuries and symptoms. He examined Ms. Nguyen on September 20, 2018 and issued his report on September 27, 2018. He was not asked to update his report. Accordingly, the Court is left with an assessment of Ms. Nguyen's soft tissue injuries based on a physiatrist's seven-year-old examination of her.

[100] Dr. Helper's expert report may be summarized as follows:

- a) Lower back: Ms. Nguyen described bilateral lower lumbar back pain complaints which Dr. Helper diagnosed as being "more likely than not, related to soft tissue mediated pain", otherwise known as "myofascial pain";
- b) Neck and upper back: Ms. Nguyen described "neck and upper back complaints" which Dr. Helper diagnosed as being "most in keeping with soft tissue mediated pain";
- c) Right Thoracolumbar Mid-Back Area: Ms. Nguyen described "right sided thoracolumbar back pain" (being her mid-back) which is "a separate entrance complaint relative to her low back pain". This was "once again soft tissue mediated pain"; and
- d) Left Thoracolumbar Mid-Back Area: Ms. Nguyen described "left thoracolumbar back pain and/rib area tenderness". Dr. Helper opines that he is "unable to provide structure specific diagnosis for the court". He notes that "Ms. Nguyen's hypersensitivity is assumed to be genuine". Dr. Helper notes that Ms. Nguyen has a "a small focal region of hypersensitivity to light to moderate pressure at her left thoracolumbar junction out towards the lower posterolateral ribs that does not have a formal diagnosis".

[101] I describe Dr. Helper's clinical findings with regard to these four regions in more detail below.

a) Lower Back

[102] Dr. Helper opined that Ms. Nguyen's bilateral lower lumbar back pain (or lower back pain) complaints were "directly related to" the November 2015 MVA. He added that Ms. Nguyen's involvement in the May 2017 MVA "appears to be a negligible event". He noted in his expert report that "consistent with Ms. Nguyen's verbal history", Ms. Nguyen did not perceive a clear change in her low back symptoms after the May 2017 MVA. He "did not note clear documentation of a change in her physical status following [the May 2017 MVA]".

[103] Dr. Helper also reported that, in September 2018, Ms. Nguyen's low back soft tissue pain was "mild". He opined that "with a soft tissue diagnosis and mild physical examination findings, [he] was optimistic that Ms. Nguyen will be able to achieve further improvements over the next year", although "it is more likely than not she will be left with some degree of low back pain []".

b) Neck and Upper Back

[104] With regard to Ms. Nguyen's neck and upper back pain, Dr. Helper noted in this expert report that Ms. Nguyen had "pre-existing issues" and "lingering symptoms" from the 2009 MVA where she "developed symptoms of neck and upper back pain" that "overlaps with her present-day neck and upper back pain complaints". While Ms. Nguyen testified at trial that she had recovered from the 2009 MVA at the time of the November 2015 MVA, Dr. Helper reported that during his examination, she described mild intermittent, non-limiting symptoms of tightness and occasional discomfort in this region before the November 2015 MVA. I accept Dr. Helper's report in this regard and note that Ms. Nguyen did not volunteer this evidence at trial.

[105] Dr. Helper also opined that "Ms. Nguyen's neck and upper back pain complaints are directly related to her involvement in the [November 2015 MVA]". Dr. Helper opines: "[I]t is my assumption that Ms. Nguyen has experienced a worsening of a pre-existing condition as a result of her involvement in the [November 2015 MVA]" and "her involvement in the [May 2017 MVA] and [August 2018 MVA] may further contribute to her symptoms, although I am satisfied with the impression the relative contribution is much smaller" (emphasis added).

[106] Dr. Helper found that in September 2018, Ms. Nguyen's neck and upper back soft tissue pain was also mild. When discussing the severity of her symptoms, Ms. Nguyen reported that "at present, her symptoms typically falls between 1/10 and 3/10 on the numeric rating scale for pain".

[107] Dr. Helper opined that Ms. Nguyen's prognosis was "negatively influenced by her exposure to multiple MVCs", although her "prognosis is positive for further partial improvements in her neck and upper back pain through further [as of September 2018] rehabilitation and fitness participation". He also opined that her neck pain will not worsen, and it is more likely that while her neck pain will not resolve completely, it is more likely to improve partially, although the degree of improvement is difficult to predict.

c) Right Thoracolumbar Mid-Back Area

[108] Dr. Helper noted that it was "Ms. Nguyen's perception that she developed symptoms of tightness and discomfort at her right thoracolumbar junction [mid-back area] after her involvement in the [August 2017 MVA]". Accordingly, he concluded that this injury was "assumed to have been caused by the [August 2017 MVA]". He opined it was more likely than not that she would achieve a near resolution of these symptoms.

d) Left Thoracolumbar Mid-Back Area

[109] Dr. Helper noted that Ms. Nguyen described "a small focal region of hypersensitivity to light to moderate pressure at her left thoracolumbar [mid-back] junction out toward the lower posterolateral ribs" with no formal diagnosis. He stated that the tenderness in the area was "assumed to represent her most accurate recollection of her musculoskeletal history" (emphasis added). Based on her self-reporting, he opined that the left mid-back symptoms were "directly related" to Ms. Nguyen's involvement in the November 2015 MVA. Dr. Helper further opined that Ms. Nguyen described:

[] a stability of her symptoms over the majority of her clinical course, followed by a one-week flare-up of unknown cause. This pattern is atypical and makes my judgment of her prognosis more difficult.

[110] Dr. Helper opined that "her recent flare-up would settle back to her baseline" and that Ms. Nguyen "would have a degree of sensitivity from this area for the foreseeable future".

[111] Dr. Helper opined that Ms. Nguyen was not permanently disabled from playing tennis and that her ability to return to athletic participation, such as tennis, is more likely than not to be helped by her fitness training.

[112] Dr. Helper acknowledged that he was unaware of events in Ms. Nguyen's vocational and educational career since his examination in September 2018 and that they would likely be important in an assessment of Ms. Nguyen's current "functional status".

2. Dr. George Medvedev: Neurologist

[113] Dr. George Medvedev was qualified as a neurologist. He examined Ms. Nguyen on September 2, 2021 for approximately an hour and completed his expert report on October 18, 2021.

[114] Dr. Medvedev opined that during Ms. Nguyen's medical assessment, "she demonstrated normal motor, sensory and autonomic function of the cranial nerves", as well as "full range of movement in the neck" with "no root tension signs".

- [115] Dr. Medvedev opined that Ms. Nguyen suffered a concussion and had reported "experiencing symptoms of post-concussive cognitive inefficiency" arising from the November 2015 MVA. On cross-examination, he affirmed these reported symptoms were mild. He opined that she did not require special therapy, noting her symptoms had improved but were continuing, although she had reached "maximum" attainable recovery. He also diagnosed "chronic low back pain" that was unlikely to resolve.
- [116] Dr. Medvedev acknowledged during his in cross-examination that independent medical examinations are "snapshots in time" and since his medical examination of Ms. Nguyen was done in 2021, an update or follow-up independent medical examination of her would have been important.
- [117] Dr. Medvedev affirmed, during his cross-examination, that that he was not aware of Ms. Nguyen's vocational and educational advancements prior to and since his medical assessment in September 2021, and that they would be important to assess Ms. Nguyen's current functional status. Dr. Medvedev affirmed that given her career and educational advancement since his assessment in 2021, Ms. Nguyen is likely more capable and functional than he had previously assessed her to be.
- [118] Dr. Medvedev affirmed that Ms. Nguyen reported to him during his assessment that her depression, which she attributed to her cognitive symptoms, had in fact resolved.
- [119] Ms. Nguyen did not deny the portions of Dr. Medvedev's report that stated her headaches had resolved, or that she attributed her depression to diminished cognitive performance which had since resolved.
- [120] During his cross-examination, Dr. Medvedev altered his opinion that the "2017 Accidents" aggravated all of Ms. Nguyen's symptoms from the November 2015 MVA. He corrected his opinion to state that his diagnosis of a concussion only came from the November 2015 MVA.
- [121] In cross-examination, Dr. Medvedev confirmed that he did not do any cognitive testing or neuropsychological testing of Ms. Nguyen, that he did not find any objective changes in Ms. Nguyen's cognitive function, and that he relied solely on Ms. Nguyen's subjective reports at his one hour-long interview in opining that Ms. Nguyen had "subjective changes" in her cognitive function.
- [122] Dr. Medvedev also acknowledged during his cross-examination that he did not explain in his report how he came to his diagnosis.

3. Dr. Laura Klubben: Psychologist

- [123] Dr. Laura Klubben was qualified as a registered psychologist. She submitted an expert report and has also treated Ms. Nguyen. She first saw Ms. Nguyen on September 22, 2016. Dr. Klubben testified that she assessed Ms. Nguyen at that time and then continued to see and treat Ms. Nguyen at various points until trial. Dr. Klubben issued her expert report on August 3, 2021.
- [124] Like the other experts retained by Ms. Nguyen, some years have passed since her 2021 expert report was issued.
- [125] In her 2021 expert report, Dr. Klubben opined that following the November 2015 MVA, "Ms. Nguyen's psychological symptoms likely met DSM-5 criteria for Major Depressive Disorder ["MDD"], Generalized Anxiety Disorder ["GAD"]; and Specific Phobia - Situational (Vehicles)". She also opined that these symptoms continued to the time she saw Ms. Nguyen in September, October, and November of 2016.
- [126] Dr. Klubben further opined that following the May 2017 MVA, Ms. Nguyen's Specific Phobia symptoms "initially increased". Further, following the August 2017 MVA, Dr. Klubben opined that Ms. Nguyen experienced "an initial worsening in her symptoms of depression, generalized anxiety, and Specific Phobia". According to Dr. Klubben, at the time of her further assessments in May and July 2021, these symptoms had improved but were not resolved.
- [127] On cross-examination, Dr. Klubben testified that Ms. Nguyen's psychiatric symptoms have significantly improved. She also acknowledged that she only applied the Beck Anxiety Inventory on May 14, 2021, and Ms. Nguyen's score indicated a level of anxiety symptoms in the mild range. Further, she applied the Beck Depression Inventory on May 14, 2021 and that Ms. Nguyen's score was in the "minimal range".
- [128] Dr. Klubben noted that Ms. Nguyen reported to her in May 2021, that she was "sad and down a couple of times per month", with triggers for her low mood including working long days, feeling fatigued, and rainy and dark weather in the winter.
- [129] Dr. Klubben gave no opinion on Ms. Nguyen's ability to work except for her testimony during cross-examination that Ms. Nguyen was doing well in her job and that Ms. Nguyen's psychiatric symptoms have significantly improved. She testified in re-direct that while she had not seen any fairly significant recent changes in Ms. Nguyen, who she had last seen in October 2024, she had not done a full assessment of Ms. Nguyen since 2021 and would, therefore, need to do a full assessment of Ms. Nguyen to confirm any ongoing diagnoses that Ms. Nguyen may have, which she has not done.
- [130] With regard to Ms. Nguyen's psychological state in 2016, Dr. Klubben testified in cross-examination that she made the diagnoses of MDD and GAD in 2016 through her treatment sessions, notes of those sessions, and that her "exceptional memory", which allowed her to merely confirm her diagnosis in her 2021 expert report, when she actually "put pen to paper".

- [131] In her expert report, Dr. Klubben described her initial sessions with Ms. Nguyen on September 22, October 20, and November 2, 2016 as including her "initial assessment" before her later assessments on May 14 and July 26, 2021. She also spoke to Ms. Nguyen's brother but did not speak to Ms. Nguyen's common law partner in 2021 (who Ms. Nguyen has since formally married).
- [132] The defendants submit that Dr. Klubben "may have crossed the line into advocacy" when she relied solely on her memory to make a "retroactive diagnosis" in 2021 regarding Ms. Nguyen's psychological state after the November 2015 MVA. Notably, Dr. Klubben was not asked to prepare an expert report and assess Ms. Nguyen for the purposes of this litigation until she had treated her over the course of several years. Specifically, it was not until April 27, 2021, that Dr. Klubben was formally instructed in writing by Ms. Nguyen's lawyers to "assess" Ms. Nguyen and prepare a "medical-legal" report for the purposes of this litigation.
- [133] I am of the view that the approach taken in tendering this expert evidence in this case is likely not a best practice, in that Dr. Klubben was required to rely on her notes, memory and assessments in 2016. Nevertheless, I am not of the view that Dr. Klubben should be disqualified as an expert witness or that her evidence should be discounted in its entirety. Dr. Klubben affirmed in her report that she was aware of the duty to the Court to not be an advocate for any party and she also testified that she exercised her professional skills impartially. While I am also mindful of the risk of unconscious bias in such cases by assessments made by longstanding treating practitioners, I remain of the view that my assessment of the evidence in this case will be better informed by considering and weighing Dr. Klubben's evidence. The issue before me is ultimately one of the proper weight to be given to her expert report and evidence. I return to this issue later in these Reasons.

4. Dr. Philip Teal: Neurologist

- [134] Dr. Philip Teal was retained by the defendants and was qualified as a neurologist. He examined Ms. Nguyen on June 24, 2024 for three hours and conducted various neurological and cognitive tests. He issued an expert report on September 9, 2024. I found Dr. Teal to be a very impressive witness.

a) The November 2015 MVA

- [135] Dr. Teal provided the following expert opinion regarding the November 2015 MVA:

- 1) Ms. Nguyen does not meet the criteria sufficient for diagnosing a probable mild traumatic brain injury ("MTBI"), also referred to interchangeably as a "mild concussion";
- 2) Ms. Nguyen had post-traumatic headaches, mixed pattern;
- 3) Ms. Nguyen sustained a Grade II cervical soft tissue strain without neurological complications; and

- 4) Ms. Nguyen sustained myofascial strain and soft tissue injuries to her back, shoulder, and chest.

[136] I review each of these findings in more detail below.

i. No concussion or Mild Traumatic Brain Injury ("MTBI")

[137] Dr. Teal's expert report and testimony established that he undertook a thorough and methodical assessment of Ms. Nguyen's subjective self-reports, the medical documentation, and his own medical examination and testing. He opined that there was less than a 50% chance that Ms. Nguyen sustained a concussion or mild traumatic brain injury ("MTBI") arising from the November 2015 MVA.

[138] Dr. Teal addressed the key criteria on the question of whether Ms. Nguyen sustained a concussion. For example, he noted that Ms. Nguyen was seen and assessed in the emergency department at VGH within hours of the November 2015 MVA, but no concussion was recorded or noted as a diagnosis. Rather, the hospital recorded that: Ms. Nguyen did not sustain any loss of consciousness; her Glasgow Coma Score was 15/15; there was no anterograde amnesia for events immediately following the impact; and there was "no recorded concerns in medical or nursing records regarding confused or amnestic behaviour". Dr. Teal also noted that there was no record or observation of acute "confused or amnestic behaviour". Further, Ms. Nguyen recalled and reported her subsequent actions after the collision to him very clearly, with detailed memories of what happened immediately before and after the collision. Dr. Teal also considered that Ms. Nguyen had no evidence of traumatic brain injury on subsequent neuroimaging.

[139] Dr. Teal considered that the diagnosis of concussion/MTBI that was subsequently made was "based on subjective symptoms rather than on a critical analysis of injury mechanisms, acute signs, and adherence to working definitions/criteria for the diagnosis of MTBI". Dr. Teal was cross-examined on his opinion and his methodology. His opinion was not shaken or compromised but reaffirmed in the process.

[140] Dr. Teal opined that Ms. Nguyen "does not have cognitive impairment or any cognitive inefficiencies that can be attributed to a TBI", and also that Ms. Nguyen performed well and within normal cognitive parameters.

ii. Headaches

[141] Dr. Teal opined that Ms. Nguyen sustained post-traumatic headaches as a result of the November 2015 MVA. He explained that the development of post-traumatic headaches is not synonymous with the occurrence of a concussion or MTBI. He further opined as follows:

It is my opinion Ms. Nguyen's headaches were mixed pattern including cervicogenic headaches which are headaches from pain-sensitive structures in the upper neck and which can occur following a whiplash-type injury mechanism or a direct blow to the back of the head with subsequent soft tissue injuries. She also developed migraine pattern headaches.

iii. Grade II cervical strain

[142] Dr. Teal opined that Ms. Nguyen suffered a Grade II cervical strain from the November 2015 MVA.

[143] A Grade II cervical strain is one of four clinical anatomic grades of cervical strains. The Quebec Task Force on Whiplash-Associated Disorders defines a Grade II as follows:

Grade II: Neck complaints and musculoskeletal signs that may include decreased range of motion and point tenderness.

[144] Dr. Teal further opined that Ms. Nguyen sustained "a Grade II cervical strain without neurological injury to the cervical spine or cervical nerve roots and without any evidence of bony injury or any significant structural changes in the cervical spine".

[145] As well, Dr. Teal opined that Ms. Nguyen's neurological examination by Dr. Toth in 2017 showed a normal neurological examination and that she also had a normal neurological examination during his assessment in 2024.

[146] In light of his examination, assessment, and findings outlined above, Dr. Teal opined that he "would have anticipated that Ms. Nguyen would be completely or partially disabled for a period of no more than three or four months" from the November 2015 MVA.

b) The May 2017 MVA

[147] Dr. Teal noted that in his assessment examination, Ms. Nguyen characterized this accident as "minor". She reported that she did not sustain a blow to the head, there was no loss of consciousness, and she had a clear recollection of the details surrounding this rear-end collision, which occurred while her husband was turning a corner. They did not go to the hospital and carried on with their day. Their vehicle was drivable.

[148] It was Dr. Teal's opinion that Ms. Nguyen sustained the following injuries/diagnoses:

- a) Ms. Nguyen did not sustain a MTBI;
- b) Ms. Nguyen stated that there was an aggravation of her neck and upper back pain a result of this accident, which is consistent with soft tissue injuries and myofascial strain; and
- c) Ms. Nguyen did not sustain any injury to the central or peripheral nervous system as a result of this accident.

[149] Dr. Teal also opined that Ms. Nguyen became more anxious when in a car as a passenger, noting that she was already seeing a psychologist for "maintenance" at the time of the May 2017 MVA. He does not specify whether this was reported to him by Ms. Nguyen.

[150] Ms. Nguyen reported to Dr. Teal that while she was experiencing periodic headaches at the time of the May 2017 MVA, she was progressively improving from the November 2015 MVA and the headaches were "not as much".

c) The August 2017 MVA

[151] Dr. Teal noted in his expert report that Ms. Nguyen did not sustain a loss of consciousness or a head injury in the August 2017 MVA. He noted that she reported vomiting after this accident, which she attributed to having just eaten her lunch.

[152] Ms. Nguyen advised Dr. Teal that as a result of this accident, she sustained bruises to her knees, pain in her right arm, and soreness in her neck and back, including her upper back and shoulders.

[153] Dr. Teal opined that as a result of the August 2017 MVA, Ms. Nguyen "sustained aggravation and worsening of her pre-existing symptoms as well as new symptoms directly attributed to [the August 2017 MVA]".

[154] He also opined that Ms. Nguyen did not sustain a MTBI in the August 2017 MVA.

[155] Dr. Teal found that the August 2017 MVA "resulted in a setback with regards to [Ms. Nguyen's] soft tissue injuries, pain and driving anxiety".

[156] Dr. Teal opined that "Ms. Nguyen has an excellent neurological prognosis" adding that:

It is my opinion it is unlikely Ms. Nguyen has any residual cognitive impairments attributable to a MTBI. Any possible MTBI that occurred as a result of [the November 2015 MVA] was at the extremely mild end of the spectrum for injuries of this nature. The natural history of recovery is generally excellent.

[157] Dr. Teal noted that Ms. Nguyen has been able to successfully pursue her career and has been able to become a project manager and double her salary. He opined that "her successful career path is inconsistent with any significant neurocognitive sequelae".

[158] At the time of his evaluation, Ms. Nguyen performed well within normal limits on cognitive testing. It was Dr. Teal's opinion that "any subjective cognitive symptoms of forgetfulness or cognitive inefficiency experienced years after the [November 2015 MVA] are most likely secondary to non-neurological conditions such as depression, obstructive sleep apnea, and psychological stressors". Furthermore, Dr. Teal opined that Ms. Nguyen "is not at any long-term risk for delayed neurological sequelae" arising from either the November 2015 or May 2017 MVAs.

- [159] Dr. Teal also stated in his report that while Ms. Nguyen experiences episodic migraine headaches, these are now infrequent and not disabling.
- [160] Notably, Dr. Teal opined that Ms. Nguyen's "current pattern of migraine headaches does not fulfill criteria for chronic post-traumatic headaches as they are now quite episodic". He added that "[m]igraine headaches are very common in the general population, particularly in women of Ms. Nguyen's age category".
- [161] Dr. Teal further opined that in his opinion, Ms. Nguyen's migraine headaches are unlikely to become disabling in the future and that "there are numerous treatment options available to her should they worsen as part of the natural history of migraine headaches".
- [162] Dr. Teal also opined that Ms. Nguyen has no neurological limitations regarding recreational activities, including hobbies, crafts, travel, social activities, and personal training activities.

5. Dr. Eugene Okorie: Psychiatrist

- [163] Dr. Eugene Okorie was retained by the defendants and was qualified as a psychiatrist. He evaluated Ms. Nguyen on October 30, 2024 by video, reviewed medical documentation, and prepared a thorough and focused expert report on September 11, 2024 regarding Ms. Nguyen psychiatric history and his opinions regarding her mental conditions.
- [164] Dr. Okorie opined that Ms. Nguyen does not have any ongoing or active mental disorder attributable to the November 2015, May 2017, or August 2017 MVAs. Further, he opined that, while Ms. Nguyen had "emotional responses to pain-related disruptions and concerns about road safety", her symptoms did not rise to the level of MDD or GAD.
- [165] Dr. Okorie opined that following the November 2015 MVA, Ms. Nguyen experienced driving anxiety which worsened after the May and August 2017 MVAs and led to driver rehabilitation. He opined that although Ms. Nguyen described frustration and concern about the disruptions caused by the November 2015 MVA related injuries and the time invested in going to various treatments in the acute phase of her injuries, Ms. Nguyen "did not describe and her records did not show that she ever had the pervasive and persistent anxiety, generalized worries, anhedonia, or depressed mood needed for the diagnosis of GAD or MDD".
- [166] Dr. Okorie testified that all people experience some anxiety and depression, but there is no diagnosis made for MDD or GAD unless certain thresholds are met and they were not met in Ms. Nguyen's case. He explained that "clinically significant" refers to whether a patient meets the threshold of a diagnosis under the DSM-5, and again he opined Ms. Nguyen did not meet the requisite thresholds for MDD or GAD based on his interview of her and his assessment of her medical history and records. He confirmed he also reviewed Dr. Klubben's clinical notes in reaching his opinions.
- [167] Dr. Okorie diagnosed Ms. Nguyen's driving anxiety as follows:

Based on her account and records, she had emotional responses to pain-related disruptions and concern about road safety following the [November 2015 MVA] which evolved into an adjustment disorder or specific (traffic related) phobia following the subsequent MVAs.

Although she noted residual passenger anxiety, expected of a person, who was a passenger in three previous MVAs, she can cope with it, and it does not stop her from riding in vehicle [sic] and as such is not clinically significant or diagnostic of a mental disorder. In my opinion, Ms. Nguyen does not have any ongoing or active mental disorder attributable to the [November 2015 MVA].

[168] For ease of reference, I will refer to Ms. Nguyen's "adjustment disorder or specific (traffic related) phobia" as her "Driving and Traffic Related Phobia".

[169] Dr. Okorie found that Ms. Nguyen's Driving and Traffic Related Phobia has remitted and is not disabling. He opined in his expert report:

Neither Ms. Nguyen's account nor her records suggest that her remitted specific phobia or adjustment disorder impaired her from working.

[170] Dr. Okorie added that Ms. Nguyen has "received reasonable and indicated psychotherapy and driver rehabilitation for her [Driving and Traffic Related Phobia]". He opined that based on Ms. Nguyen's accounts and Ms. Woodward's report, "Ms. Nguyen's specific phobia or adjustment disorder had remitted by August 15, 2018, when Ms. Woodward's report showed that she no longer needed any further treatment interventions".

[171] In addition to his conclusion that Ms. Nguyen's Driving and Traffic Related Phobia remitted in the summer of 2018, Dr. Okorie stated the following regarding Ms. Nguyen's passenger anxiety:

[Ms. Nguyen] noted current non-clinically significant residual passenger anxiety, which she can manage, and it does not prevent her from travelling in vehicles.

[172] Dr. Okorie stated in his expert report that Ms. Nguyen had an established diagnosis of moderate sleep apnea. Notably, Dr. Okorie does have expertise in assessing and treating patients with sleep apnea. The evidence establishes that not only is he an experienced psychiatrist, in his practice, he sees eight to ten patients with sleep disorders on Mondays each week with about 70% having sleep apnea, 20% having insomnia, and 10% having other sleep disorders.

[173] Dr. Okorie opined that Ms. Nguyen's sleep apnea "results in continuing symptoms of snoring, daytime fatigue and attentional and memory concerns". He added, consistent with Ms. Nguyen's own evidence, that she "does not consistently use" the recommended continuous positive airway pressure ("CPAP") therapy.

[174] Ms. Dr. Okorie opined that Ms. Nguyen's sleep apnea is unrelated to the Subject MVAs.

[175] Dr. Okorie also concluded that that Ms. Nguyen "does not have any psychologically mediated disabilities (work, recreational or household)" and "provided she complies with CPAP to avoid degrading her mental state" he "would not expect any future disabilities".

[176] In light of his conclusions, Dr. Okorie recommended that Ms. Nguyen "wind down" her counselling [with Dr. Klubben] to prevent maladaptive dependence on her therapist and erosion of her self-sufficiency".

III. THE NATURE AND EXTENT OF MS. NGUYEN'S INJURIES AND CONDITIONS

[177] I begin by considering Ms. Nguyen's pre-existing conditions and injuries prior to the November 2015 MVA. I then consider Ms. Nguyen's conditions and injuries, if any, as they relate to each Subject MVA in turn.

A. Pre-Existing Injuries or Conditions

1. Psychological

[178] The evidence before me does not establish on a balance of probabilities that Ms. Nguyen suffered from conditions such as MDD or GAD prior to the November 2015 MVA. While in the 2009 MVA, the car she was in spun around due to the collision, there is no evidence of a prior Driving and Traffic-Related Phobia.

[179] I find that Ms. Nguyen experienced increased anxiety and a lack of confidence prior to the November 2015 MVA, although the evidence suggests this was situational.

2. Physical

[180] I find that Dr. Helper was meticulous in documenting Ms. Nguyen's self-reported symptoms, some of which were admissions favouring the defence, which Ms. Nguyen accepted or did not dispute.

[181] Dr. Helper undertook a detailed assessment of Ms. Nguyen's "musculoskeletal history" during his examination of Ms. Nguyen. In this examination, Ms. Nguyen described being "T-boned" in the 2009 MVA, causing the car she was in to spin twice before coming to rest on the sidewalk.

[182] Dr. Helper opined that Ms. Nguyen "developed symptoms of neck and upper back pain" that "overlapped" with her neck and upper back pain complaints when he examined her. Dr. Helper reported that during his examination of Ms. Nguyen, she admitted to having "mild intermittent, non-limiting symptoms of tightness and occasional discomfort in this region" before the November 2015 MVA. I accept that Ms. Nguyen candidly admitted these symptoms to Dr. Helper. She was regrettably less candid at trial.

[183] Based on Dr. Helper's evidence, I find that before the November 2015 MVA, Ms. Nguyen had a pre-existing condition in the form of continuing neck and upper back symptoms that, although residual and very mild, caused tightness and occasional discomfort.

[184] Ms. Nguyen admitted to having headaches, and some light sensitivity, before the November 2015 MVA, although she reported that these were more frequent and severe after the November 2015 MVA. I accept her evidence in this regard.

B. Physical Injuries from the November 2015 MVA

1. Low Back Pain

[185] Based on Ms. Nguyen's evidence and the expert opinion of Dr. Helper, as summarized earlier in these Reasons, I am satisfied that she sustained a soft tissue injury to her lower back because of the November 2015 MVA. I am also satisfied on the evidence before me that in the first six to eight months after this accident, Ms. Nguyen's low back pain improved considerably and while it did not resolve fully by the time of the May 2017 MVA, the pain was "mild". Further, I find on the evidence before me that, with the assistance of various treatment modalities, such as physiotherapy, Ms. Nguyen's low back pain continued to improve after the first six to eight-month anniversary of the November 2015 MVA and before the May 2017 MVA.

[186] In light of my assessment of the evidence before me, I find on a balance of probabilities that by the time of the May 2017 MVA, Ms. Nguyen's low back pain from the November 2015 MVA was substantially resolved with some residual tenderness or flare-ups from time to time.

2. Neck and Upper Back Pain

[187] The evidence before me establishes that Ms. Nguyen suffered a soft tissue injury to her neck and upper back in the November 2015 MVA. I accept Dr. Teal's opinion that this was likely a "Grade II" whiplash that involved a decreased range of motion and point tenderness.

[188] As with her lower back symptoms, Ms. Nguyen testified that before the May 2017 MVA, with the assistance of various treatment modalities between November 2016 and May 2017, she had "definite" improvements in her upper back, neck, and shoulders. In light of her testimony and the evidence as a whole, including that of Dr. Teal, I find that by the time of the May 2017 MVA, Ms. Nguyen's neck and upper back symptoms had returned to her pre-existing baseline condition following the 2009 MVA, with mild, intermittent, and not limiting symptoms.

3. Mid-Back Pain

[189] Ms. Nguyen testified that she suffered mid-pack and rib pain after the November 2015 MVA. Dr. Helper also opined that she developed mid-back pain in the left thoracolumbar and rib area tenderness directly related to the November 2015 MVA.

[190] I find that Ms. Nguyen sustained left mid-back and rib tenderness after the November 2015 MVA. I also find that, like her other soft tissue injuries, this injury was appropriately and effectively treated with various treatment modalities and was substantially resolved before the May 2017 MVA, although with some residual tenderness from time to time.

[191] Dr. Helper also opined that Ms. Nguyen sustained a soft tissue injury to the left side of her mid-back in the August 2017 MVA, which I address later in these Reasons.

4. Concussion/MTBI

[192] Ms. Nguyen believes she experienced a concussion in the November 2015 MVA. Dr. Medvedev opined that Ms. Nguyen sustained a mild concussion, stating that she was on "the milder side" of MTBI patients. However, Dr. Teal opined that it was unlikely that Ms. Nguyen suffered a concussion or MTBI.

[193] Considering the evidentiary matrix before me and in light of the opinions of both Dr. Teal and Dr. Medvedev, I prefer the opinion of Dr. Teal on this issue. As noted earlier in these Reasons, Dr. Teal conducted a 3-hour assessment and produced an expert report which explains his opinion and how he came to the conclusions he did. However, Dr. Medvedev's expert report articulates his opinions without unpacking or explaining how he reached the conclusion that Ms. Nguyen sustained a concussion. His conclusions did not reflect the depth of information and analysis apparent in Dr. Teal's report.

[194] The issue of whether Ms. Nguyen sustained a concussion or MTBI in the November 2015 MVA turns on a balance of probabilities. Considering the contradictory opinions of Dr. Medvedev and Dr. Teal, coupled with the strength of Dr. Teal's written opinion, analysis, and his viva voce testimony, I find Ms. Nguyen has not met her burden of proving that she sustained a concussion or MTBI as a result of the November 2015 MVA.

5. Headaches

[195] I find that Ms. Nguyen had a vulnerability to headaches including migraines prior to the November 2015 MVA but that these headaches were exacerbated by the November 2015 MVA.

[196] The evidence establishes that Ms. Nguyen suffered from headaches, including migraines, following the November 2015 MVA. While Ms. Nguyen acknowledged that she had headaches including those with light sensitivity, before the November 2015 MVA, Ms. Nguyen also testified that her headaches were worse after this accident. Further, I accept Dr. Teal's opinion that Ms. Nguyen suffered from "post-traumatic headaches, mixed pattern".

- [197] I also accept Dr. Teal's learned opinion that the development of post-traumatic headaches is not synonymous with the occurrence of a concussion or MTBI, as well as his explanation that that Ms. Nguyen's post-accident headaches involved migraines, as well cervicogenic headaches from pain-sensitive structures in the upper neck that can occur following a whiplash-type injury mechanism.
- [198] However, I found Ms. Nguyen's evidence with regard to when and how much her headaches improved somewhat inconsistent, unclear, and unreliable. Nevertheless, doing the best I can with the evidence before me, I find her headaches significantly improved in frequency and duration by the time of the May 2017 MVA. While Ms. Nguyen stated that they were "fairly regular" around this time, I am not satisfied on a balance of probabilities that her headaches a year and a half after the November 2015 MVA were post-traumatic and related to that accident, nor am I able to conclude that her headaches were incapacitating. Notably, in April 2016, Ms. Nguyen renewed her consulting contract with the Vancouver Division of Family Practice and also achieved a new full-time and higher level position as a senior business analyst at BC Children's Hospital.
- [199] Reviewing the evidence before me, I also accept Dr. Teal's opinion that Ms. Nguyen's post-traumatic headaches have currently resolved and that her current ongoing migraine headaches are unrelated to the Subject MVAs and are common for women in Ms. Nguyen's age group. These opinions are more consistent with my assessment of the evidence as a whole.

6. Cognitive Impairment

- [200] As summarized earlier in these Reasons, Ms. Nguyen described experiencing certain cognitive deficiencies, such as headaches, retention, and concentration issues, which she attributed to the November 2015 MVA. I have already found that Ms. Nguyen's headaches were exacerbated by this accident, and I am mindful that these headaches and her soft tissue injuries may well have affected her concentration and work performance for a few months after the November 2015 MVA. However, the question remains whether, apart from these symptoms, Ms. Nguyen suffered cognitive impairment because of the November 2015 MVA.
- [201] Dr. Teal examined Ms. Nguyen and performed cognitive tests. He opined that Ms. Nguyen does not have cognitive impairments or any cognitive inefficiencies that can be attributed to a traumatic brain injury. Further, he more specifically opined that Ms. Nguyen does not have any cognitive inefficiencies and that she performed well and within normal cognitive parameters during his assessment. I accept Dr. Teal's opinion on this issue. Again, I find his opinions most persuasive and most consistent with the evidentiary matrix before me. I also accept his opinion that Ms. Nguyen is not at any long term risk for delayed neurological sequelae arising from the November 2015 MVA.

C. Psychological Injuries or Conditions arising from the 2015 MVA

1. Driving and Traffic-Related Phobia

[202] I accept Ms. Nguyen's evidence that, after the November 2015 MVA, she suffered from anxiety while in a car as the passenger or driver, requiring her to receive treatment. It is not surprising that Ms. Nguyen experienced such anxiety after the November 2015 MVA. This is understandable, particularly in light of her previously experiencing the 2009 MVA in which her car spun out of control.

[203] Both Dr. Klubben and Dr. Okorie agreed that Ms. Nguyen suffered from a driving or traffic related adjustment disorder or the Driving and Traffic-Related Phobia. Both of these experts also agree that this condition has remitted or resolved. I accept Dr. Klubben and Dr. Okorie's diagnoses and find that the November 2015 MVA caused a Driving and Traffic-Related Phobia. I also find that her symptoms in this regard were successfully treated by the summer of 2018.

2. MDD and GAD

[204] I prefer the expert opinion of Dr. Okorie over that of Dr. Klubben with regard to whether Ms. Nguyen suffered from MDD or GAD as a result of the November 2015 MVA. I find Dr. Okorie's opinion more aligned and more consistent with the evidence before me as a whole. I also find Ms. Nguyen's own evidence at trial more consistent with Dr. Okorie's assessment.

[205] I accept Dr. Okorie's opinion that the Ms. Nguyen's psychological state never rose to the level of the pervasive and persistent anxieties, generalized worries, or depressed moods required for a diagnosis of MDD or GAD. Dr. Okorie testified that many people experience anxiety and depression, but there is no diagnosis made for MDD or GAD unless certain thresholds are met, and they were not met in Ms. Nguyen's case. While I am certainly mindful that Ms. Nguyen sustained physical injuries from the November 2015 MVA that caused her pain and that she was tearful at times and I most certainly accept that she felt anxiety and sadness, particularly after the November 2015 MVA, I nevertheless find her symptoms did not rise to the level of MDD or GAD.

3. Other Psychological Injuries or Conditions

[206] Having had the benefit of hearing all the lay and expert evidence at trial, I also find that Ms. Nguyen does not currently have any ongoing or active mental disorders attributable to the November 2015 MVA. I accept Dr. Okarie's opinion in this regard as well.

D. Summary of Findings

[207] In summary, I find that by the time of the May 2017 MVA, the low back injury Ms. Nguyen sustained from the November 2015 MVA had substantially resolved, as had her neck and upper back pain (i.e., the grade II whiplash), mid-back pain (left), and headaches. I accept that at that time, Ms. Nguyen had some intermittent tenderness in her lower and mid-back (left) and some continuing headaches from time to time, although I find her headaches had

significantly reduced in frequency and intensity. I also find, on a balance of probabilities, that of Ms. Nguyen's symptoms incapacitated or significantly affected her work performance.

- [208] I find that by the May 2017 MVA, Ms. Nguyen's neck and upper back condition had returned to her pre-existing baseline following the 2009 accident. Similarly, I am not persuaded that Ms. Nguyen suffered a concussion, cognitive impairment or deficits, MDD, or GAD arising from the November 2015 MVA. However, I find that Ms. Nguyen continued to experience a Driving and Traffic-Related Phobia.

E. Injuries from the May 2017 MVA

- [209] As noted earlier, Ms. Nguyen characterised the May 2017 MVA as minor and placed relatively little emphasis on it during her testimony. She expressly testified that she did not feel the same symptoms or for the same amount of time as she did with the November 2015 MVA, and that this accident was "not memorable to [her]".
- [210] Ms. Nguyen did not testify that her head struck anything during this MVA and she did not claim that she suffered a concussion or concussion related symptoms. She testified that she felt like she had whiplash and that she hurt her upper-back, although her testimony in this regard was somewhat tenuous. Ms. Nguyen also testified that the pain she had from the May 2015 MVA was "pretty temporary".
- [211] I find that the May 2017 MVA caused a very mild injury to Ms. Nguyen's neck and upper back, and that these symptoms were very temporary in nature, returning to baseline before the August 2017 MVA. The evidence does not establish, on a balance of probabilities, that Ms. Nguyen suffered any other physical symptoms as a result of the May 2017 MVA.
- [212] Ms. Nguyen did not establish that she suffered any cognitive impairments in the May 2017 MVA. I accept Dr. Teal's evidence that Ms. Nguyen has not suffered cognitive injuries or deficiencies in any of the Subject MVAs, and that she is not at any long term risk of delayed neurological sequelae arising from the May 2017 MVA.
- [213] I also accept Dr. Okorie's opinion that Ms. Nguyen never suffered from MDD and GAD and find this accident in no way contributed to any depressive symptoms. However, I accept Dr. Okorie's opinion that this accident likely exacerbated her Driving and Traffic-Related Phobia.

F. Injuries from the August 2017 MVA

- [214] The evidence establishes that Ms. Nguyen sustained a number of injuries as a result of the August 2017 MVA that sets this accident apart from both the November 2015 MVA and the May 2017 MVA.

- [215] I find Ms. Nguyen's injuries from the August 2017 MVA include injuries to her neck and upper back, the right-side of her mid-back, her right shoulder, her chest, and her knees. I also find that Ms. Nguyen suffered an increased number of headaches with increased intensity as a result of this accident. These conclusions are supported, on a balance of probabilities, by both Ms. Nguyen's evidence, the expert evidence, and the evidentiary substrate as a whole.
- [216] The evidence also establishes that Ms. Nguyen's symptoms have improved considerably from the time of the August 2017 MVA, although she reports some continuing upper back and low back pain, some neck tightness, and headaches. Her evidence regarding her headache pain is inconsistent, however. Again, she reported to Dr. Medvedev, in September 2021, that her headaches had resolved.
- [217] With regard to Ms. Nguyen's alleged cognitive complaints, she testified that after the August 2017 MVA, she had trouble remembering tasks or conversations and had difficulty focusing while at work. Although Ms. Nguyen's evidence was not entirely clear regarding the timing of these symptoms, her evidence dovetails somewhat with that of her supervisor, Mr. Singer, in relation to her work performance after the August 2017 MVA. As noted, Mr. Singer testified that Ms. Nguyen's work performance was "great" until the summer of 2017 when she started complaining of headaches and vertigo and "did not feel good". Mr. Singer testified that Ms. Nguyen's performance changed: she was not attending meetings, she was not keeping proper notes or records, and she was not prepared for meetings.
- [218] However, what has not been established on a balance of probabilities is whether Ms. Nguyen's work performance was a function of cognitive deficiencies or impairment arising from the August 2017 MVA (or any of the previous Subject MVAs, for that matter). Of significance, I have found that Ms. Nguyen suffered from neck, shoulder, and back pain and an increase in frequency of headaches as a result of the August 2017 MVA. In this light, I find her lack of focus and poor job performance after the August 2017 MVA while working with Mr. Singer is most likely to have been a function of these other sources of pain and symptoms rather than an injury to her brain causing cognitive incapacities or deficits. My conclusion in this regard is supported by Dr. Teal's opinion that Ms. Nguyen performed well within normal limits on her cognitive testing, and that she has "an excellent neurological prognosis". Dr. Teal also opined that Ms. Nguyen has no neurological limitations regarding recreational activities including hobbies, crafts, travel, social activities, and personal training activities.
- [219] As to Ms. Nguyen's mental condition, I find that her Driving and Traffic-Related Phobia was certainly exacerbated and made worse by the August 2017 MVA. Ms. Nguyen was unequivocal in this regard and the expert opinions of Dr. Klubben, Dr. Teal, and Dr. Okorie also support this conclusion.

- [220] Ms. Nguyen's evidence and that of each of these experts also support my finding that Ms. Nguyen's Driving and Traffic Related-Phobia was effectively treated. I accept Dr. Okorie's opinion that this condition remitted by August 2018 when Ms. Woodward's report showed Ms. Nguyen "no longer needed any further treatment interventions". While I acknowledge that Ms. Nguyen reports some residual driving anxiety, I also accept Dr. Okorie's opinion that this condition is no longer "clinically significant".
- [221] As previously discussed, I have also accepted Dr. Okorie's opinion that Ms. Nguyen has never suffered MDD or GAD. I also note that Dr. Teal opined that Ms. Nguyen does not require any antidepressant medication or psychiatric evaluation. Indeed, there is no evidence that Ms. Nguyen has ever taken any medication for depression or anxiety. Furthermore, Ms. Nguyen does not claim she is currently suffering from MDD or GAD. Again, Ms. Nguyen reported to Dr. Medvedev during his independent medical examination in September 2021 that her depression had resolved.

IV. CAUSATION AND DIVISIBILITY

- [222] It is axiomatic that the fundamental purpose of tort law is to restore plaintiffs, as much as possible, to the position they would have been in "but for" the negligence of a defendant. In this context, it is the plaintiff who has the onus at law of establishing, on a balance of probabilities, that the defendant's negligence either caused or materially contributed to the injuries in question. To be compensable, a defendant's negligence does not have to be the sole cause of the injury sustained by the plaintiff, providing the negligence is "a" cause: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, 1996 CanLII 183 (S.C.C.); *Farrant v. Laktin*, 2011 BCCA 336 at para. 9; *Resurface Corp. v. Hanke*, 2007 SCC 7 at paras. 21-23.
- [223] It is also well established that in awarding damages, a plaintiff is only to be restored to the original position they were in before the negligence but is not to be restored to a better position. A defendant is not required to compensate a plaintiff for any debilitating effects arising from a pre-existing condition that the plaintiff would have experienced anyway. Likewise, a defendant is not required to compensate a plaintiff for an injury caused by the negligence of another.
- [224] If the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, this is to be taken into account in reducing the overall damages award: *Athey* at para. 35.
- [225] A defendant is nonetheless liable for a plaintiff's injuries even if the injuries are unexpectedly severe because of a pre-existing condition. The defendant must take the victim as they are and is liable for their injuries even though the plaintiff's losses are more dramatic than they would be for the average person: *Athey* at para 34. Similarly, in *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para. 22, our Court of Appeal reasoned that once causation has been proven, the tortfeasor is fully liable for the damage caused by their wrongful conduct even when pre-existing conditions or physical

vulnerabilities existed prior to the accident.

[226] Nevertheless, while a plaintiff needs only to prove the negligence of the defendant was "a" cause rather than "the cause" of the injury, damages are to only restore the plaintiff to their original condition before the negligence of the defendant occurred.

[227] In *Borgford v. Boizard*, 2016 BCCA 317 at para. 55, our Court of Appeal reasoned that a judge may make common sense inferences from the facts in determining causation and that scientific proof of causation is not required: see also *Clements (Litigation Guardian of) v. Clements*, 2012 SCC 32 at paras. 38, 46. However, inferences must be based on proven facts and not guesswork or conjecture: *Kerr (Litigation Guardian of) v. Creighton*, 2008 BCCA 75 at paras. 58-62; *Haase v. Pedro* (1970), 21 B.C.L.R. (2d) 273 (C.A.) at 279-80, 305, 1970 CanLII 205 (B.C.C.A.).

A. Multiple Accidents and Divisibility

1. Legal Principles

[228] Although Ms. Nguyen confirms that she is seeking damages flowing from the November 2015 MVA and the May 2017 MVA and not for damages flowing solely from the August 2017 MVA in Washington State, her counsel also asserts as follows:

In the event that there is a finding by this court that any of the injuries are indivisible as between the Second and Third Accidents [i.e., the May 2017 MVA and the August 2017 MVA respectively], the defendants from the First and Second Accident are jointly and severally liable for any injuries or consequences of those injuries.

[229] In *Athey*, the Court provides the following guidance on the issue of divisibility:

[24] The respondents submitted that apportionment is permitted where the injuries caused by two defendants are divisible (for example, one injuring the plaintiff's foot and the other the plaintiff's arm): *Fleming*, supra, at p. 201. Separation of distinct and divisible injuries is not truly apportionment; it is simply making each defendant liable only for the injury he or she has caused, according to the usual rule. The respondents are correct that separation is also permitted where some of the injuries have tortious causes and some of the injuries have non-tortious causes: *Fleming*, supra, at p. 202. Again, such cases merely recognize that the defendant is not liable for injuries which were not caused by his or her negligence.

[Emphasis added.]

[230] In determining whether Ms. Nguyen's injuries are divisible or indivisible, I must distinguish between causation, as the source of the loss, as distinct from "the rules for the assessment of damages in tort": *Blackwater v. Plint*, 2005 SCC 58 at para. 78. The liability question is whether the conduct of the defendant caused injury. The assessment of damages question requires a determination of whether the injury derived from multiple sources and whether it is divisible. As noted by the Court in *B.P.B. v. M.M.B.*, 2009 BCCA 365 at para. 42, if the injury is divisible, responsibility is allocated to the individual sources of

the injury.

- [231] In B.P.B. at para. 43, our Court of Appeal also reasoned that if the injury is indivisible, the court must consider the possible application of the thin skull or crumbling skull rules in the context of the victim's original condition. If the crumbling skull rule applies, it forms part of returning the victim to his or her original condition and the tortfeasor is not responsible for events that caused the crumbled skull. Absent the application of the crumbling skull rule, in cases where the injury is indivisible, all tortfeasors who caused or contributed to the injury are generally 100% liable for the damages sustained by the victim: see also *A.C. v. Y.J.C.*, 2003 CanLII 2464 (O.N.S.C.), 36 R.F.L. (5th) 79; *E.D.G. v. Hammer*, 2003 SCC 52.
- [232] Accordingly, liability for a single and indivisible injury is joint and several: see also *Athey* at para. 25; *Bradley v. Groves*, 2010 BCCA 361 at para. 21.
- [233] In *Sedighi v. Simpson*, 2015 BCSC 214, Justice Fisher (then of this Court) described the difference between divisible and indivisible injuries at para. 36:
- [36] [] Divisible injuries are those that can be separated so that their damages can be assessed independently. Indivisible injuries are those that cannot be separated: *Bradley v Groves*, 2010 BCCA 361 at para. 20.
- [234] The Supreme Court of Canada in *Blackwater* at para. 74, cited by our Court of Appeal in B.P.B. at para. 39, recognized that "untangling the different sources of damage and loss may be nigh impossible". Yet, the law requires that it be done when possible, since a plaintiff is entitled to only be compensated for losses caused by the actionable wrong of the defendants. Both the issue of divisibility and causation are questions of fact for this Court.
- [235] In *Conarroe v. Tallack*, 2020 BCSC 626, Justice Marzari provides the following useful synopsis of the law on the application of these principles:
- [131] Whether injuries are divisible or indivisible is a question of fact. If the trier of fact can determine the extent to which each defendant caused or contributed to the plaintiff's injuries on the available evidence, the injuries are divisible.
- [132] The principle of divisibility can apply most obviously to injuries to different parts of the body. Divisibility may also be possible where injuries are to the same part of the body where the evidence is sufficient to establish distinct causes of each aspect of the injury: *Khudabux v. McClary*, 2018 BCCA 234 at para. 34; *Deol v. Sheikh*, 2016 BCSC 2404 at para. 19; *Fleming v. McAllister*, 2017 BCSC 753. It can also be possible in relation to sequential injuries, where the evidence is sufficient to establish a baseline: *Uppal v. Judge*, 2016 BCSC 642 at para. 86; *Dunne v. Sharma*, 2014 BCSC 1106 at para. 99. Finally, even where a physical injury is indivisible, specific heads of damages may still be divisible where the evidence permits such a division: *Scoates v. Dermott*, 2012 BCSC 485 at paras. 164-169; *Rajan v Hudon*, 2014 BCSC 1678; *Lakatos v. Lakatos*, 2017 BCSC 1990.

[Emphasis added]

- [236] I find that, except for her Driving and Traffic-Related Phobia, each of Ms. Nguyen's other injuries sustained in each of the Subject MVAs are divisible and distinguishable in fact both in regard to when these injuries occurred and their severity. I find that, save for her Driving and Traffic-Related Phobia, Ms. Nguyen's injuries can be readily separated so that her damages in respect to each can be assessed separately and independently.
- [237] More specifically, I am able to separate and divide the injuries Ms. Nguyen sustained in the Subject MVAs which were to the same parts of her body. That is, I can separate the injuries she sustained to her low back, mid-back, and upper back and neck in the three Subject MVAs. I am also able to separate and divide the cervicogenic and migraine headache injuries she experienced as between the Subject MVAs.
- [238] Ms. Nguyen describes her injuries and symptoms in the May 2017 MVA as being categorically different and less severe than those in either the November 2015 MVA or the August 2017 MVA, using words such as "pretty temporary" and "not memorable". My findings of fact bear this out. With the exception of having suffered a very mild neck and upper back injury in the May 2017 MVA, Ms. Nguyen complained of no other physical symptoms arising from this specific accident. Further, I find the evidence does not establish that Ms. Nguyen developed MDD or GAD as a result of this accident, nor did it affect her mood or anxiety. The evidence also does not establish that Ms. Nguyen experienced an increase in headaches arising from the May 2017 MVA.
- [239] With respect to the very mild neck and upper back injury Ms. Nguyen sustained in the May 2017 MVA, I have found that, on a balance of probabilities, this injury was very mild and temporary in nature.
- [240] After careful consideration, I find that Ms. Nguyen suffered new injuries in the August 2017 MVA that were distinct from those she sustained in the November 2015 MVA and the May 2017 MVA.
- [241] Ms. Nguyen's injuries in the August 2017 MVA can be readily distinguished from those she sustained in the May 2017 MVA. She sustained multiple injuries in the August 2017 MVA that were different in kind and degree from those she sustained in the May 2017 MVA. I find Ms. Nguyen's injuries in the August 2017 MVA were more serious and long lasting than those in the May 2017 MVA and also in comparison to the November 2015 MVA. She sustained another injury to her neck and upper back in August of 2017 and also injured the right-side of her mid-back, as well as her right shoulder and arm. I find her chest and knees were also injured, although her chest and knee pain did not persist as her other injuries did from the August 2017 MVA. Ms. Nguyen also suffered an increased number of headaches as a result of the August 2017 MVA.

[242] However, the evidence before me does not lead me to make the same conclusion regarding Ms. Nguyen's Driving and Traffic-Related Phobia. Unlike any of her other injuries, I have found Ms. Nguyen Driving and Traffic-Related Phobia cannot be "untangled" or separated between any of the Subject MVAs.

[243] Accordingly, having found that Ms. Nguyen's Driving and Traffic-Related Phobia is indivisible, the defendants in the actions before me are jointly and severally liable for this particular injury. I will address this indivisibility issue again later in these Reasons when I assess the proper quantum of damages.

2. Intervening Events

[244] Ms. Nguyen has described several conditions and injuries she experienced in recent years after the August 2017 MVA that are not caused by the defendants' actions, and which she did not claim against the defendants in negligence. For clarity, I expressly address these now.

[245] Ms. Nguyen acknowledged under cross-examination that, in March 2023, she was diagnosed with sleep apnea which disturbs her sleep. She participated in a study and it was recommended that she use a CPAP machine. Ms. Nguyen acknowledged that she does not use this machine regularly. While Ms. Nguyen did not claim the sleep apnea was caused or arose out of any of the Subject MVAs, I find, on a balance of probabilities, that the evidence does not support the conclusion that any of the Subject MVAs was a cause of her sleep apnea.

[246] Ms. Nguyen acknowledged that after the August 2017 MVA, she was diagnosed with diabetes. She also agreed that she injured her left knee in June of 2022 while dancing. She stated she does feel her knee sometimes, but the injury was not "disruptive". Again, while Ms. Nguyen did not claim these injuries arose out of any of the Subject MVAs, I find on a balance of probabilities that, in any event, the evidence does not support the conclusion that any of the Subject MVAs was a cause of her diabetes or her knee injury.

[247] Ms. Nguyen acknowledged that she has also sustained a right wrist injury which occurred during a High Intensity Interval Training class. She sought physiotherapy for this injury. She testified that it resolved in January of 2021 after being treated. Again, while Ms. Nguyen did not claim this injury arose out of any of the Subject MVAs, I find on a balance of probabilities that, in any event, the evidence does not support the conclusion that any of the Subject MVAs was a cause of her right wrist injury.

[248] On cross-examination, Ms. Nguyen also acknowledged that she was in another motor vehicle accident on December 6, 2021 when a car backed into the driver side of her car. She complained of right hip pain the next day at a doctor's visit. She testified that she considered it a minor injury. She also testified that she "did not recall really injuring" herself "because it felt insignificant to her at the time". Again, while Ms. Nguyen did not claim this injury arose out of any of the Subject MVAs, I find on a balance of probabilities

that the evidence does not, in any event, support the conclusion that any of the Subject MVAs was a cause of her right hip injury in 2021.

- [249] On cross-examination, Ms. Nguyen acknowledged suffering from sciatica after the December 6, 2021 accident. Again, while she did not claim this injury arose out of any of Subject MVAs, I find on a balance of probabilities that the evidence does not, in any event, support the conclusion that any of the Subject MVAs was a cause of her sciatica.
- [250] Ms. Nguyen also acknowledged that she has developed soreness in the palms of her hands. She added that she regularly experiences pain in her hands, causing her to take breaks or stop using the mouse while working at her computer. Again, while Ms. Nguyen did not claim this injury arose out of any of the Subject MVAs, I find on a balance of probabilities that the evidence does not, in any event, support the conclusion that any of the Subject MVAs was a cause of Ms. Nguyen's sore palms.
- [251] Ms. Nguyen is not entitled to any compensation award for these intervening injuries and conditions. I have found the Subject MVAs are not a cause of these injuries and conditions.

V. DAMAGES

A. Non-pecuniary Damages

- [252] Non-pecuniary damages are intended to compensate plaintiffs for their past and future pain and suffering, disability, and loss of enjoyment of life: *Javorovic v. Booth*, 2021 BCSC 336 at para. 54. In assessing non-pecuniary damages, each case must be assessed based on the particular facts before the court: *Trites v. Penner*, 2010 BCSC 882 at para. 189. When making this assessment, the following factors delineated in *Stapley v. Hejslet*, 2006 BCCA 34, are key considerations:
- [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 (QL), 2005 BCCA 54.

[253] Further, as noted by our Court of Appeal in *Moskaleva v. Laurie*, 2009 BCCA 260, the amount of the non-pecuniary award should compensate for more than just direct injuries:

[95] The underlying purpose of non-pecuniary damages is to "make life more endurable" and should be seen as compensating for more than just a plaintiff's direct injuries [citations omitted]. In *Lindal v. Lindal*, [1981] 2 S.C.R. 629 at 637, Dickson J. for the Court emphasized that the quantum of an award is determined through a functional approach and should not necessarily correlate with the gravity of the injury []

[254] Accordingly, the amount of an award for non-pecuniary damage should not depend only upon the seriousness of the injury but also upon its ability to ameliorate the condition of the plaintiff, considering their specific circumstances.

1. Appropriate Quantum of Non-Pecuniary Damages

[255] Counsel for Ms. Nguyen submits that non-pecuniary or general damages in the amount of \$200,000 is appropriate. Her counsel relies on the decisions in the following two cases.

- (1) *Antignani v. Heany*, 2022 BCSC 228, a case involving an award of non-pecuniary damages of \$200,000

[256] I find that the facts in *Antignani* are very distinguishable from the case before me in a number of ways. For example, the plaintiff in *Antignani* suffered from a concussion, a post-traumatic stress disorder, major depression secondary to post-concussion syndrome, and cognitive impairment. None of these findings of fact were made in this case.

- (1) *Blackburn v. Lattimore*, 2021 BCSC 1417, a case involved an award of non-pecuniary damages of \$180,000

[257] *Blackburn* is also very distinguishable in a number of ways, including that the plaintiff: suffered a concussion, developed post-concussive syndrome, suffered cognitive dysfunction, suffered from depression; had to keep her house dark due to light sensitivity; was unable to tolerate voice or hand gestures; did not go out of the house often; suffered from suicidal ideations; and required psychiatric medications. None of these findings of fact were made in this case.

[258] Counsel for the defendants submit that the award of non-pecuniary damages should be assessed at \$55,000, before any deductions for negative contingencies. The defendants rely on the following cases:

- (1) *Callow v. Van Hoek-Patterson*, 2023 BCCA 92, varying 2021 BCSC 1423, a case that involved an award of non-pecuniary damages of \$55,000.

[259] In *Callow*, the plaintiff was 20 years old at the time of the subject motor vehicle accident and 27 years old at the time of trial. He suffered moderate soft tissue injuries to his neck, upper back, and shoulders, which remained symptomatic despite treatment. He had no pre-existing symptoms in these areas. After his accident, the plaintiff underwent numerous treatment modalities, including over 40 physiotherapy sessions over four years, which included painful trigger point injections, and 11 sessions with the Canadian Back Institute. He also performed exercises at home that were recommended to him. Justice Frankel, writing for our Court of Appeal, found that the range for non-pecuniary damages in cases where the plaintiff suffered soft tissue injuries is between \$50,000 and \$60,000. He reasoned as follows:

[22] At a high level of abstraction, Mr. Callow's situation can be described in the following terms:

A person in their 20s who sustained moderate soft tissue injuries to their neck, back, and shoulders which, despite treatment, remained symptomatic for years. Although their condition has improved, they will continue to experience some pain flare-ups and the likelihood for future improvement is poor. With caution, can continue to participate in previous activities while monitoring physical exertion for pain.

[23] For a person in Mr. Callow's situation, I am of the view that the judge's award was inordinately low. On the basis of the awards I have reviewed, particularly the more recent ones, and bearing in mind it will always be possible to find higher or lower awards, I am of the view that the present range for non-pecuniary damages in the type of case I have just described is \$50,000 to \$60,000. Further, I consider the mid-point of that range to be fair to both parties.

[260] I find the decision in *Callow* to be much more aligned with the facts before me than the decisions relied upon by Ms. Nguyen. Nevertheless, I am of the view that Ms. Nguyen's pain and suffering is greater than that of Mr. Callow. She endured injuries from two accidents caused by the defendants' negligence and also suffered with Driving and Traffic-Related Phobia for the better part of three years.

(1) *Burnett v. Granneman*, 2023 BCSC 1425, a case that involved an award of non-pecuniary damages of \$55,000.

[261] In *Burnett*, the Court followed the range for non-pecuniary damages set out in *Callow*. The plaintiff was 36 years old at the time of the subject motor vehicle accident and 41 years old at trial. The plaintiff suffered soft tissue injuries to his neck, left trapezius, and back. These injuries made it difficult for him to continue working as a community health worker and care aide. He returned to work four months after the accident in December 2018 but left in May 2019 in favour of a sedentary role. The plaintiff continued to experience headaches and back, trapezius, and neck pain. Madam Justice J. Hughes awarded the plaintiff \$55,000 in non-pecuniary damages (see paras. 83-89). Following the accident, Mr. Burnett continued to suffer from intermittent headaches and neck, trapezius, and back pain.

- [262] While the facts in Burnett are more aligned with those in this case than the cases relied upon by Ms. Nguyen, it is again distinguishable. Ms. Nguyen experienced injuries from two accidents as a result of the defendants' negligence and also suffered from Driving and Traffic-Related Phobia for the better part of three years.
- (1) Augusta-Mansfield v. Yun, 2023 BCSC 1633, a case that involved an award of non-pecuniary damages of \$75,000.
- [263] In Augusta-Mansfield, the plaintiff was 26 years old at the time of the subject motor vehicle accident and 31 years old at the time of trial. He suffered soft tissue injuries to his back, neck, arm, and leg with symptoms of pain, numbness, tingling, difficulty sleeping, and depression. He received chiropractic, massage, and kinesiology treatments, and took medications. He continued to work as a roofer for about 2.5 months after the accident but then stopped due to his difficulties climbing ladders and carrying heavy materials onto roofs. He improved significantly, although he had ongoing pain and difficulties, and eventually went back to roofing about 4 years later.
- [264] The defendants submit that Ms. Nguyen's case is less serious than the above case as the impacts on Ms. Nguyen's employment have been much less serious. I am mindful of this submission. However, I find that Ms. Nguyen suffered from a psychological disorder that this plaintiff did not, and she sustained injuries in two accidents caused by the defendants' negligence.
- [265] I have examined each of the factors in Stapley and our Court of Appeal's functional analysis in Moskaleva in light of the circumstances before me and my findings of fact, including those relating to the nature and scope of Ms. Nguyen's injuries and symptoms, their degree of improvement and duration, her recovery, if any, in relation to the November 2015 and May 2017 MVAs, as well as my conclusions on the divisibility of her injuries. I have specifically considered the indivisible nature of Ms. Nguyen's Driving and Traffic-Related Phobia, as well as every divisible injury and symptom Ms. Nguyen sustained in both the November 2015 and May 2017 MVAs. In doing so, I am very mindful of the significant impact these injuries had on her personal life and her work life before their substantial resolution.
- [266] Furthermore, I have considered the submissions and authorities of both parties, giving due consideration to what guidance they offer and their relative comparability to the facts before me, keeping in mind that the compensation awarded must be fair to both parties and based on the facts as I found them. I have also assessed the symptoms Ms. Nguyen has suffered or will likely suffer as a result of these injuries and how they have impacted her physical health, moods, sleep, anxiety, recreational abilities, and general lifestyle, including the impact on her capacity to work. Certainly, the indivisible nature of Ms. Nguyen's Driving and Traffic-Related Phobia has increased my assessment of her non-pecuniary damages. I have also provided an allowance for Ms. Nguyen's loss of capacity to perform housekeeping tasks during the height of her symptoms: McKee v. Hicks, 2023

BCCA 109 at paras. 93-114; *Ker v. Sidhu*, 2023 BCCA 158 at 21-32; *Kim v. Lin*, 2018 BCCA 77 at para. 33; *Riley v. Ritsco*, 2018 BCCA 366 at para. 101.

[267] In this light, considering the entirety of the evidentiary matrix, I conclude that a fair and reasonable assessment of Ms. Nguyen's non-pecuniary damages is \$75,000, subject to deductions based on her pre-existing vulnerabilities, which I discuss next.

2. Implications of the Washington State Arbitration Award

[268] The divisibility or indivisibility of a plaintiff's injuries determines whether their damages award is reduced after receiving a subsequent settlement or award: *Ashcroft v. Dhaliwal*, 2008 BCCA 352, leave to appeal to SCC ref'd, 32889 (February 19, 2009). That is the situation Ms. Nguyen finds herself in after receiving an arbitration award which included \$18,000 USD in general damages, among other heads of damages such as \$3,382 USD for past wage loss.

[269] In *Ashcroft*, our Court of Appeal affirmed that an injured plaintiff should not be compensated for more than the full amount of their loss (at para. 22). Double recovery is not permitted. Accordingly, in *Ashcroft*, the Court deducted the settlement amount received by the plaintiff from a subsequent tortfeasor from the damages award made against the original tortfeasor in the case of an indivisible injury. The Court reasoned this was necessary to avoid double recovery or overcompensation (at paras. 31-35). Justice Huddart reasoned, at para. 42, that when causes of action are linked by an indivisible injury caused by separate torts, that link "brings into play not only joint and several liability, but also the rule against double recovery".

[270] In the case before me, I have found that the lion's share of Ms. Nguyen's injuries were physical injuries, and that the physical injuries Ms. Nguyen's sustained in the August 2017 MVA are divisible from the injuries she sustained in both the May 2017 and November 2017 MVAs. As such, I find there can be no double compensation or over-compensation for the physical injuries because they are each separate injuries. Accordingly, the rule against double compensation in *Ashcroft* is inapplicable regarding these physical injuries. No deduction of Ms. Nguyen non-pecuniary damages arising from her physical injuries can be justified based on the reasoning in *Ashcroft*.

[271] However, I have found that Ms. Nugyen's Driving and Traffic-Related Phobia is an indivisible injury and, accordingly, the *Ashcroft* principle is engaged. While I have found the defendants in the November 2015 and May 2017 MVAs are jointly and severally liable in damages for this indivisible injury, I must nevertheless, consider whether the Washington State arbitration award subsumes or incorporates Ms. Nugyen's Driving and Traffic-Related Phobia.

[272] The arbitrator reasoned that he considered Ms. Nguyen's "psychological conditions, physical activity, variations, and changes", her "adaptation to life activities, anxiety, stress due to the accident" and "other effects of this accident on life, friends and psychological condition". In this light, I find I am able to reasonably infer that, in considering the "effect of this accident" on Ms. Nguyen's "psychological condition", the arbitrator also considered Ms. Nguyen's driving or traffic anxiety and the impact of that anxiety on her life.

[273] Nevertheless, it would be neither proportional nor just to deduct the sum of \$18,000 USD from Ms. Nguyen non-pecuniary award of \$75,000. I am of the view that since Ms. Nguyen's nonpecuniary damages comprise mostly divisible and physical injuries, a deduction of approximately 10% of the arbitration award (i.e., \$1,800 USD) or \$2,480 CDN is just, proportionate, and best ensures that Ms. Nguyen does not receive more than the full amount of her loss. In the final analysis, her non-pecuniary award must be a fair one to both parties: see, for example, *Valdez v. Neron*, 2022 BCCA 301 at para. 52. In my view, a deduction of \$2,480 achieves this goal.

3. Pre-Existing Conditions

[274] It is well established law that a tortfeasor is not required to return a plaintiff to a better position than they would have found themselves if the tort had not occurred in the first instance: *Blackwater* at para. 78. As such, the defendants are not required at law to put Ms. Nguyen in a better position than her original one. They are not obliged to compensate her for damages she would have experienced anyway in the absence of the Subject MVAs: *Athey* at paras. 32-35. Therefore, where courts have found a plaintiff had a pre-existing condition, they have deducted an appropriate amount from the damage award because of that pre-existing condition.

[275] I have found that Ms. Nguyen suffered a pre-existing neck and upper back injury in the 2009 MVA and that she had very mild lingering symptoms at the time of the November 2015 MVA. I have also found that she suffered from headaches before the Subject MVAs, including migraines, but certainly not at the frequency or intensity she experienced after the November 2015 and the August 2017 MVAs. Considering the evidence as a whole, I am of the view that a minimal contingency deduction of 10% (i.e., \$7,500) is warranted in Ms. Nguyen's circumstances as regards her non-pecuniary damages: *Carver v. Or*, 2017 BCSC 1496 at para. 194. The 10% deduction is somewhat conservative but nevertheless fair and reasonable in light of my findings.

[276] Accordingly, after deducting \$2,480 in consideration of the Washington State arbitration award to avoid double compensation as prohibited in *Ashcroft* and deducting \$7,500 for pre-existing conditions, I find that Ms. Nguyen is entitled to non-pecuniary damages in the amount of \$65,020.

B. Past Loss of Earning Capacity

- [277] A plaintiff's entitlement to compensation for past loss of earning capacity is based on the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury sustained by the defendant's negligence: *M.B. v. British Columbia*, 2003 SCC 53 at para. 49; *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.
- [278] In *Gao v. Dietrich*, 2018 BCCA 372, our Court of Appeal provided guidance on the applicable standard of proof when assessing this loss:
- [39] The rationale for distinct standards of proof for past actual events and past hypothetical events was explained by Madam Justice Rowles in *Smith v. Knudsen*, 2004 BCCA 613 at para. 29:

What would have happened in the past but for the injury is no more "knowable" than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events.

- [40] These principles have been reiterated by this Court recently in *Grewal* at paras. 43-46, and *Rousta v. MacKay*, 2018 BCCA 29] at paras. 14-17. To the extent that other decisions could be read to hold that a past hypothetical event must be proven on a balance of probabilities they must be regarded as per incuriam: *Grewal v. Naumann*, 2017 BCCA 158] at para. 47.
- [279] Therefore, a plaintiff is not required to prove hypothetical losses of past earning capacity on a balance of probabilities. The question is whether there is a real and substantial possibility of such a loss. A future or hypothetical possibility may be considered if it is a real and substantial possibility, and not mere speculation: *Athey* at para. 27; *Morlan v. Barrett*, 2012 BCCA 66 at para. 38.
- [280] The assessment of loss follows a three-step analysis. That is the case whether the issue concerns the assessment of the past loss or pre-trial loss of earning capacity, or the future loss of earning capacity. In *Rab v. Prescott*, 2021 BCCA 345 at para. 47, our Court of Appeal described the three-step analysis as follows:
- [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 in *Brown*). The second is whether, on the evidence, there is a real and to the sort of considerations discussed in *Brown* [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.

[281] Further, compensation for past loss of earnings is based on the plaintiff's past net income loss: *Hudniuk v. Warkentin*, 2003 BCSC 62 at para. 40; *Shogi v. Lin*, 2019 BCSC 1818 at para. 303; s. Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, s. 98.

1. Plaintiff's Position

[282] Ms. Nguyen asserts that her actual lost income days from missed days of work resulting from the defendants' negligence was 15.133 days, at \$268.2 per day, resulting in a gross loss of \$4,058.67.

[283] In addition, Ms. Nguyen asserts that she worked part-days during her gradual return to work and claims she lost an additional \$2,045.00. Ms. Nguyen asserts that she lost \$1,088.00 due to missed consulting hours after she reduced the number of hours she worked at the Vancouver Division of Family Practice. She asserts that this loss comprised one month of missed consulting, and a reduction in consulting wages in the amount of \$100 per month for a period of six months.

[284] Accordingly, counsel for Ms. Nguyen asserts a gross "total hard past wage loss" of \$7,191.67, with a net loss of \$5,393.75. They further assert that the future value of Ms. Nguyen's past wage loss is "\$6,319.64, under the Law and Equity Act, R.S.B.C. 1996, c. 253 over a period of 8 years at 2.0%".

[285] As well, Ms. Nguyen asserts that because of her concussion and cognitive impairment, MDD, GAD and Driving and Traffic-Related Phobia, her career trajectory was detrimentally impacted causing an additional past loss of earning capacity of \$129,097. This sum was calculated by Mr. Szekely, an economist, who was qualified and an expert witness at trial. Mr. Szekely calculated Ms. Nguyen's past wage loss based on the assumption that she would have advanced "to pay range 9" by the commencement of trial.

[286] More specifically, Mr. Szekely compared Ms. Nguyen's actual earnings with his calculation of an increase in salary at a higher "defined salary range" every three years. Counsel for Ms. Nguyen asserts that there is a real and substantial possibility that Ms. Nguyen would have advanced her career at this higher rate in the absence of the defendants' negligence.

[287] Considering each of the above bases of past wage loss, Ms. Nguyen seeks an aggregate past loss of earning capacity of \$136,288.67.

2. Defendants' Position

[288] The defendants agree that Ms. Nguyen missed a total of 15.133 days of work after the November 2015 MVA for a net past wage loss of \$3,044.00.

[289] The defendants partially accept that, as a result of Ms. Nguyen's graduated return to work schedule after the November 2015 MVA, she lost additional income. However, the defendants assert that this additional loss, as calculated by Ms. Nguyen, does not "factor in" Ms. Nguyen's chest infection during her recovery period over the course of a one week period, as well as potential days she would have taken off for vacations or sick days, even if

the November 2015 MVA had not occurred.; For example, during the Christmas holidays and other planned days off. Accordingly, the defendants suggest a 20% negative contingency of \$409. They submit that a gross wage loss as a result of her reduced work schedule amounts to \$1,636 with a net past wage loss of \$1,227.00, for a combined net past wage loss of \$4,271.

[290] The defendants also take issue with Ms. Nguyen's claim that she suffered a loss of \$1,088.00 due to working fewer consulting hours at her second job consulting for the Vancouver Division of Family Practice. They submit that the consulting income amounts referenced in Ms. Nguyen's submissions were "cherry-picked". They submit that she suffered no wage loss in this regard.

[291] The defendants also dispute Ms. Nguyen claim for past loss of capacity based on the assertion that she fell behind her peers' earning capacity, arguing that no such capacity loss occurred.

3. Analysis of Past Loss of Earning Capacity

[292] I have reviewed and assessed Ms. Nguyen's claim for net lost wages resulting from lost days and hours of work from both her jobs. I have concluded that her claim of \$6,319.64 is reasonable calculation and assessment of net past loss of earnings arising from the defendants' negligence. This sum reflects her missing 15.133 days of work, plus her lost wages resulting from her gradual return to full-time work coupled with her loss of income from lost hours of work as a consultant.

[293] I am very mindful that a court may find a plaintiff has suffered a capital loss in the form of past earning capacity loss because of injuries and symptoms caused by a negligent defendant even in circumstances where the plaintiff has missed little, if any, work after being injured. However, I find this is not such a case.

[294] Considering Ms. Nguyen's work capacity as a capital asset, I am mindful of the court's analysis in *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 10, and the following factors from *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.), 1985 CanLII 149 (B.C.S.C.):

- 1) whether the plaintiff has been rendered less capable overall from earning income from all types of employment;
- 2) whether the plaintiff is less marketable or attractive as an employee to potential employers;
- 3) whether the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to her had she not been injured; and
- 4) whether the plaintiff is less valuable to herself as a person capable of earning income in a competitive labour market.

- [295] I have applied these factors to the factual matrix before me in the "pre-trial scenario" regarding the injuries Ms. Nguyen sustained as a result the defendants' negligence. I am simply unable, on the evidence before me, to find a real and substantial possibility, beyond this loss \$6, 319.64, that Ms. Nguyen was rendered less capable overall from earning income or that she was less marketable or attractive to potential employers. I am also not satisfied that she lost the ability to take advantage of all job opportunities which might otherwise have been open to her had she not been injured.
- [296] In addition, while Ms. Nguyen testified that she lacked confidence, Ms. Gandham candidly acknowledged on cross-examination that Ms. Nguyen avoided more senior roles even though she had the ability to do the work and, indeed, Ms. Nguyen did advance her career and take on more senior roles while also running two businesses and volunteering her time. The preponderance of objective evidence does not support the conclusion that because of the defendants' negligence, Ms. Nguyen is less valuable to herself as a person capable of earning income in a competitive labour market. While she seemed to lacked confidence at times, I find there is no real and substantial possibility that this characteristic was a function of the defendants' negligence arising out of the November 2015 or the May 2017 MVAs.
- [297] I have also applied the three-part test in Rab as set out earlier in these Reasons. Considering the entirety of the evidentiary matrix, including my findings of fact regarding the nature and duration of her injuries and symptoms, including their substantial resolution, and Ms. Nguyen's over all career trajectory, I also find that there is no real and substantial likelihood that the defendants' negligence negatively impacted Ms. Nguyen's past loss of earning capacity or resulted in pecuniary loss beyond the days, part-days, or hours she physically missed at work following the November 2015 MVA, which I have already quantified. I find that Ms. Nguyen's claim that, as a result of the defendants' negligence, she suffered injuries prior to trial that that prevented her from earning what her peers earned, to be speculative at best.
- [298] The first part of the Rab test is evidentiary: whether the evidence discloses a potential event (that is, between the time of the defendants' negligent MVAs and trial) that could have led to a loss of capacity. Assessing the first branch of this analysis, as I have already done in part by applying the Brown factors, I am unable to conclude that there is a real and substantial possibility that the nature and scope of Ms. Nguyen's injuries (between the time of the defendants' negligence and the trial) could lead to a loss of her capacity to earn an income. I have already found earlier in these Reasons that Ms. Nguyen's injuries from the defendants' negligence substantially resolved with minor residual physical symptoms well before trial. As regards her Driving and Traffic-Related Phobia, Ms. Nguyen advised it did not even prevented her from driving or being a passenger. It certainly did not cause to miss any work.

- [299] With respect to the second branch of the Rab test, I am unable to conclude on the evidence before me that there was a real and substantial possibility of a possible event, between the date of the defendants' negligence causing Ms. Nguyen's injuries and the date of trial, that would cause Ms. Nguyen a pecuniary loss beyond the missed days and hours of work that I have already assessed and awarded to her.
- [300] Counsel for Ms. Nguyen relied on her testimony and view that some of her peers advanced more rapidly in their career than she did. The difficulty with this evidence is that it is subjective and anecdotal. Furthermore, while some of her peers may well have advanced more quickly in their careers, others may have not. I do not have a complete, representative or reliable evidentiary basis upon which to objectively assess Ms. Nguyen's claim. Her submission in this regard amounts to speculation.
- [301] Counsel for Ms. Nguyen also relied on the testimony of Mr. Singer and characterized his evidence as "instructive on the point that the plaintiff was not meeting the requirements of the job due to complaints of headaches". However, Mr. Singer testified that Ms. Nguyen work performance was very good, and that she was "doing great" in 2016; notably, this was after the November 2015 MVA. In addition, based on the evidence as whole, I find that Mr. Singer was referring to the August 2017 MVA when he testified that Ms. Nguyen's work performance deteriorated in the summer of 2017. That is, her work performance, according to Mr. Singer, did not deteriorate until after the Washington State accident with a defendant that is not a party to this lawsuit.
- [302] In addition, I must also note that Mr. Singer's evidence is somewhat inconsistent with that of Ms. Gandham in relation to Ms. Nguyen's work performance after the August 2017 MVA. Notably, Ms. Gandham testified that she first met Ms. Nguyen in October of 2017, after the injuries she sustained in the August 2017 MVA in Washington State. Ms. Gandham testified that, in October 2017, she was responsible for overseeing a construction project at BC Children's Hospital and was aware of Ms. Nguyen's work. The evidence established that Ms. Nguyen was a senior business analyst at that time, also working at BC Children's Hospital. Ms. Gandham testified that the project was very successful and that Ms. Nguyen "did great", adding that Ms. Nguyen's project "went live with no issue".
- [303] Ms. Gandham also testified that despite doing "great" on the BC Children's Hospital project, Ms. Nguyen presented as timid and shy. It was Ms. Gandham's view that Ms. Nguyen did not advocate for herself and lacked confidence. Although, Ms. Gandham gave evidence to the effect that Ms. Nguyen's career development under-represented the career growth that Ms. Gandham expected of her and what Ms. Nguyen could, in her view, attain, Ms. Gandham also testified that Ms. Nguyen had both the opportunity and ability to take on more senior roles and could have become a higher paying consultant. She also agreed on cross-examination that Ms. Nguyen avoided more senior roles even though she had the ability to do the work required in those senior roles.

- [304] In any event, on the evidence before me, Ms. Nguyen's career trajectory has been impressive. She has, in fact, taken on progressively senior roles and is currently a Program Manager in relation to the new St. Paul's Hospital facility. In this context, in regard to the second branch of the Rab test, I am simply unable to find a real and substantial possibility that Ms. Nguyen suffered a pecuniary loss as a result of her injuries and the defendants' negligence.
- [305] The third step in the Rab test involves assessing if a real and substantial possibility of pecuniary loss exists and the value of that possible future loss. As I have found there is no real and substantial possibility of a pecuniary loss, this assessment is not necessary.
- [306] Accordingly, I find that Ms. Nguyen's total past loss of income capacity is \$6,319.64 based on the days and hours of works she missed as an employee and a consultant.
- [307] I have considered whether this wage loss award should be reduced in light of the Washington State arbitration in which Ms. Nguyen was awarded \$3,382.24 for lost wages. I have concluded that there is no principled basis or reason for doing so. The arbitrator's award for past wage loss does not concern injuries that arise from the defendants' negligence in the actions before me but from the actions of the other driver in the August 2017 MVA, in Washington State. Further, I have found no indivisible injury from the Subject MVAs that could conceivably cause a wage loss after the August 2017 MVA. Therefore, the rule against double recovery does not apply.

C. Future Loss of Earning Capacity

- [308] The three-step analysis set out in Rab also applies to assessing whether and to what extent Ms. Nguyen suffered a future loss of earning capacity.
- [309] I must first consider whether the evidence discloses a potential future event that could lead to a loss of earning capacity. Second, I must assess whether there is a real and substantial possibility that the future event in question will cause a pecuniary loss. Third, if such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which includes assessing the relative likelihood of the possibility occurring.
- [310] Ms. Nguyen also advances her claim for future loss of earning capacity based on the premise that she "fell behind her peers due to her injuries at a critical advancement period or launching point in her career". However, her counsel's arguments in this regard rely on the submissions that Ms. Nguyen suffered from cognitive impairment, MDD, and GAD. As I have discussed earlier in these Reasons, I have concluded that the evidence before me does not establish these conditions. Furthermore, the evidence does not support the conclusion that her current mental and physical conditions were debilitating in the past or that there is a real and substantial possibility that they are likely to be debilitating in the future.

- [311] With respect to the first branch of the Rab test, I find the evidence does not disclose a real and substantial possibility of a future loss of earning capacity arising from the defendants' negligence. Indeed, the evidence established that even after the August 2017 MVA in Washington State, each of Ms. Nguyen's physical injuries improved, became progressively better, and substantially resolved. As discussed earlier in these Reasons, while I find that Ms. Nguyen currently experiences residual symptoms, these are mild and intermittent. Again, the evidence does not support a real and substantial likelihood that these symptoms will impact her work capacity in the future. Further, her Driving and Traffic-Related Phobia has been effectively treated. In any event, it has not prevented her from working.
- [312] As discussed earlier, I have accepted the opinion of Dr. Teal that Ms. Nguyen is not at any long-term risk for delayed neurological sequelae from the defendants' admitted negligence in the November 2015 and May 2017 MVAs. I have also accepted Dr. Teal's opinion that Ms. Nguyen's current pattern of migraine headaches "does not fulfill the criteria for chronic post-traumatic headaches" and that they are "unlikely to become disabling in the future". Indeed, Dr. Teal's opinion is consistent with Dr. Helper's evidence in which he recorded in his September 2018 medical examination of Ms. Nguyen that she reported having "minor residual headaches". Furthermore, by the time of her medical assessment with Dr. Medvedev in 2021, Ms. Nguyen reported to him that her headaches had stopped.
- [313] More specifically, I find no real and substantial possibility of a loss of earning capacity. On the evidence before me, I do not find there is a real and substantial possibility, arising from the defendants' negligence, that: Ms. Nguyen will be rendered less capable overall from earning income; that she will be less marketable or attractive to potential employers; that she will lose the ability to take advantage of all job opportunities which might otherwise have been open to her had she not been injured; or that Ms. Nguyen is less valuable as a person capable of earning income in a competitive labour market.
- [314] As regards the second analytical step in the Rab test, I find there is no real and substantial possibility that a future event arising from the defendants' negligence will cause her pecuniary loss. Again, the evidence does establish a real and substantial likelihood that Ms. Nguyen will lose opportunities to advance in her work in the future as a result of the injuries she sustained in either the November 2015 or May 2017 MVAs or, for that matter, the August 2015 MVA.
- [315] Not only is her career trajectory exceptional, she has taken on progressively more challenging positions and there is no indication of a real and substantial possibility that this trajectory will not continue into the future. The evidence simply does not establish a real and substantial possibility that Ms. Nguyen will fall behind her peers in the future due to the Subject MVAs.
- [316] Given these findings, it is not necessary that I consider the third step of the Rab test.
- [317] Accordingly, I find Ms. Nguyen has not suffered a loss of future earning capacity.

D. Cost of Future Care

- [318] The principles and analytical framework that inform the assessment of future cost of care is well-established. In *Pang v. Nowakowski*, 2021 BCCA 478, our Court of Appeal summarized the guiding legal principles:
- [56] The legal framework that is relevant to a future cost of care award is well-established. Recently in *Quigley*, this Court said:
- [43] The purpose of the award for costs of future care is to restore the injured party to the position she would have been in had the accident not occurred: *Andrews v. Grand & Toy Alberta Ltd.* (1978), 83 D.L.R. (3d) 452 (S.C.C.) at p. 462; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at para. 29. This is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, adopted in *Aberdeen v. Zanatta*, 2008 BCCA 420 at para. 41.
- [44] It is not necessary that a physician testify to the medical necessity of each item of care for which a claim is advanced. However, an award for future care must have medical justification and be reasonable: *Aberdeen* at para. 42; *Gao* at para. 69.
- [57] Several additional principles are relevant:
- i) The court must be satisfied the plaintiff would, in fact, make use of the particular care item: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 40 and 54; *Hans v. Volvo Trucks North America Inc.*, 2018 BCCA 410 at paras. 86-87.
 - ii) The court must be satisfied that the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred: *Shapiro v. Dailey*, 2012 BCCA 128 at paras. 54-55;
 - iii) The court must be satisfied that there is no significant overlap in the various care items being sought: *Johal v. Meyede*, 2015 BCSC 1070 at para. 9(f); *Brodeur v. Provincial Health Services Authority*, 2016 BCSC 968 at para. 356; *Myers v. Gallo*, 2017 BCSC 2291 at para. 231.
- [58] Assessing damages [] is not a precise accounting exercise; rather, it is an assessment: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21; *O'Connell v. Yung*, 2012 BCCA 57 at para. 55. Nevertheless, the award should reflect a reasonable expectation of what the injured person would require to put them in the position they would have been in but for the incident. This is an objective assessment based on the evidence and must be fair to both parties: *Shapiro* at para. 51; *Krangle* at paras. 21-22. []

[Emphasis added.]

[319] Submissions from Ms. Nguyen's counsel on the appropriate cost of future care were not helpful to the Court. They submitted that Ms. Nguyen "seeks an award consistent with her current medical specials, from the date of the [November 2015 MVA] to calculate this head of damages". They further submit:

Over a period of 6 years the Plaintiff incurred \$12,549.88 in medical specials and she will require this care frequency for the remainder of her life to ensure that she does not decondition and she is able to maintain her current physical condition.

[320] Essentially, Ms. Nguyen relies on her past cost of care to calculate her future cost of care. However, such a "rear-view mirror" approach is not only incompatible with the legal test, which is future looking, but it also does not address what is reasonably necessary on the medical evidence to promote and address Ms. Nguyen's health in the future.

[321] Furthermore, considering all the evidence before me, I have found that Ms. Nguyen's physical symptoms have substantially resolved, with some symptoms that are mild, intermittent, and not limiting. I have found that Ms. Nguyen's Driving and Traffic-Related Driving Phobia has also been effectively healed. In this light, her medical treatments in the past, at a time when she was recently injured and in the early stages of healing, can not be an appropriate measure of damages now or in the future.

[322] Furthermore, I cannot accept Ms. Nguyen's submission that Dr. Helper's 2018 opinion should guide the Court in this assessment. Seven years ago, Dr. Helper opined that Ms. Nguyen's physical therapy and active rehabilitation at that time coupled with her independent training two days a week, was appropriate treatment for her lower back symptoms. However, his expert report is patently outdated and no updated report was provided to the Court. As well, Dr. Helper opined in 2018 that with a "soft tissue diagnosis and mild physical examination findings" he was "optimistic" that Ms. Nguyen would achieve further improvement over the course of the following year (that is, into 2019).

[323] The only other expert opinion tendered by Ms. Nguyen that addressed possible treatments into the future was by Dr. Medvedev. However, he did not recommend further treatment in regard to Ms. Nguyen's symptoms. In 2021, Dr. Medvedev opined that Ms. Nguyen "is and was fully committed to recovery and has actively participated in all offered treatments". Dr. Medvedev also opined that while "the extent and costs of future treatment is beyond the area of [his] expertise" he concluded that "no immediate recommendations for further treatment are needed at this time". Again, this is Ms. Nguyen's own expert.

[324] There is another difficulty with Ms. Nguyen's evidence which undermines her entitlement to compensation for the cost of future care. Not only is there an insufficient evidentiary substrate upon which I may find a real and substantial possibility that she requires medical treatment in the future, but the evidence before me does not address the cost or duration of any potential future care.

- [325] A plaintiff bears the onus of quantifying the cost of future care. The court cannot do its own research but must rely on the evidence before it regarding the anticipated cost of future care. In *Verma v. Friesen*, 2024 BCSC 13, the plaintiff sought \$20,000 for the cost of future care based on a psychiatrist's recommendation of counselling, occupational therapy, a sleep study, speech therapy, and medications. Nevertheless, Justice Donegan (then of this Court) made no award for cost of future care finding that there was no evidence provided by the plaintiff about the costs of the recommended treatments or services. She reasoned, at paras. 243-244, that the court can not simply "ballpark" a figure:
- [243] Mr. Verma did not provide the court with any cost estimates for any of Dr. Kroeker's recommendations. He asks me, essentially, to "ballpark" a figure, as has been done in other cases, such as *Flores v. Burrows*, 2018 BCSC 334. I am aware that the court is to "do the best it can" to assess damages so as not to "relieve the wrongdoer of the necessity of paying damages": *Loewen v. Bernardi* (1994), 1994 CanLII 1147 (BC CA), 93 B.C.L.R. (2d) 242 at para. 26. I am also aware that there are occasions where courts will "ballpark" a figure. However, in this case, there is simply no evidentiary basis in which I could even attempt to "ballpark" an award. Not only is there no evidence about anticipated costs of the recommendations made by Dr. Kroeker, there is no evidence about whether any of the services recommended by Dr. Kroeker would be available to Mr. Verma, and no evidence that even if such services were available, Mr. Verma would incur the costs, if any.
- [244] [] In these circumstances, to "ballpark" a figure for any future costs would require me to make many uncertain assumptions, not grounded in any evidence. This would not be fair or reasonable to either of the parties. On the state of the evidence, I find I am unable to make any award for this claim.
- [326] Similarly in *Panganiban v. Sovdat*, 2023 BCSC 650, at paras. 238-242, Justice Elwood made no award for cost of future care because there was no evidence of how much the experts' recommendations would cost, particularly since it was unclear whether these recommendations related to the plaintiff's residual pain and anxiety from the accident or unrelated back pain and depression. Justice Elwood reasoned:
- [241] Apart from these brief recommendations, there is no evidence of what Ms. Panganiban requires for her future medical care. There is also no evidence of how much the recommendations by Drs. O'Connor and Medvedev would cost Ms. Panganiban. Moreover, it is unclear whether these recommendations would address the residual pain and anxiety I have accepted as a result of the collision, as opposed to the back pain and depression I have not accepted. I am therefore unable to determine whether any expense is reasonable or medically justified in this case.
- [327] In the same vein, the evidence before me does not establish that Ms. Nguyen requires further treatments, nor does the evidence indicate what the future cost of any treatment would be. I am simply unable to find, either on the evidence or the law, that Ms. Nguyen is entitled to any damages for the cost of future care.

E. Special Damages

[328] The parties agreed that Ms. Nguyen is entitled to a special damages award of \$12,549.88.

VI. DISPOSITION

[329] Ms. Nguyen is entitled to non-pecuniary damages in the amount of \$65,020.

[330] Ms. Nguyen is not entitled to damages for loss of past earning capacity beyond her loss of \$6,319.64 for lost wages and consulting income.

[331] Ms. Nguyen is not entitled to any damages for future loss of earning capacity.

[332] Ms. Nguyen is entitled to special damages of \$12,549.88.

[333] As such, Ms. Nguyen's total damages award is \$83,889.52.

VII. COSTS

[334] Subject to any submissions, the parties may wish to make on the question of costs, and absent any circumstances of which I am unaware, Ms. Nguyen is entitled to her costs at Scale B.

"Morellato J."

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