

CANADA / JUDGMENT

Pang v. Burns

2020 BCSC 356

COURT

Supreme Court of British Columbia

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2020 BCSC 356 Pang v. Burns

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pang v. Burns,

2020 BCSC 356

Date: 20200312

Docket: M164909

Registry: Vancouver

Between:

Danli Jessica Pang

Plaintiff

And

Logan James-Paul Burns

Defendant

- and -

Docket: M182797

Registry: Vancouver

Between:

Danli Jessica Pang

Plaintiff

And

Joanna Olivia Nowakowski and Maria Nowakowski

Defendants

Before: The Honourable Madam Justice Choi

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.

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Place and Date of Judgment:

Vancouver, B.C.

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Introduction

- [1] Ms. Danli Pang was involved in two motor vehicle accidents which are the subject of this trial. The first was on March 10, 2016, and the second on December 9, 2017. Liability has been admitted in both. This case involves the assessment of damages only. Counsel has advised that the court is not required to apportion damages as between the two defendants.

- [2] Ms. Pang is a 52-year-old woman who was born in China. She completed a bachelors' degree in Chinese language and literature, and worked in China and Hong Kong before immigrating to Canada in 1997. She moved to Montreal and began a relationship with Mr. Atef Zaki. Ms. Pang and Mr. Zaki had their first child together in September 1999 and were married after that. The family moved to Chilliwack, British Columbia in 2000. Ms. Pang and Mr. Zaki separated in 2006 and divorced in 2009. She has largely parented their two children, now ages 20 and 17, on her own.
- [3] At the time of the first accident, Ms. Pang was working as a financial planner and translator, careers which were in their infancy. Ms. Pang argues that she is permanently disabled and cannot work as a result of the two accidents, due to psychological and physical injuries.
- [4] The main contention in this case is Ms. Pang's psychological condition prior to the accidents. All parties agree that Ms. Pang had experienced depression and anxiety prior to the accidents. The severity, duration, and frequency of her mental health issues is in dispute.

Credibility

- [5] Ms. Pang's credibility is at issue in this case. At trial, Ms. Pang sometimes lost her train of thought, gave rambling answers, and showed her frustration and anger. Ms. Pang argues that her conduct as a witness was due to her psychological injuries from the accidents. She compares herself to the plaintiff in *Wright v. Mistry*, 2017 BCSC 239, and says she tried to be forthright with the court and that her behaviour should not affect a finding of credibility.
- [6] Much of Ms. Pang's direct evidence focused on her career aspirations. Some of her hopes were not clearly articulated as a dream or goal, but left open to infer as a fact. It was clear after her cross-examination and those of her experts that there were major gaps in her evidence on direct.
- [7] For example, Ms. Pang testified that she came to Canada in 1997 because she wanted to obtain an MBA from McGill University. She then testified to meeting and marrying Mr. Zaki. Later, in direct, she returned to the subject of leaving China and wanting to go to McGill for its MBA program, since an MBA was a desired degree and McGill's was the best. It was not clear until her cross-examination that she did not attend McGill and had not even applied for the MBA program.
- [8] Much of her evidence respecting her career goals was similarly not clear and forthright in direct. However, while Ms. Pang did try to present herself in a positive light, I find that she honestly believed, or wished to believe, that her dreams were within reach. She had a tendency to speak in superlatives such as "the best" or "the biggest". I do not find that Ms. Pang was trying to deliberately mislead the court; rather, some of her evidence about her career possibilities and plans was coloured by her ambitions and her high expectations of herself educationally and vocationally. Consequently, some of her direct evidence was vague and broad. Some of the realities were only addressed in her cross-examination or had to be

gleaned from other witnesses, either in their testimony or in the expert reports.

- [9] As the defendants stress, Ms. Pang had a number of challenges in her life, starting in her childhood and continuing during her marriage to Mr. Zaki and its breakdown. I find that Ms. Pang's belief in herself and her dreams provided her with strength to cope with her challenges and push forward. I accept that Ms. Pang honestly believed that she was "superwoman", which fueled her perseverance. She coped by holding fast to her belief that her dreams were mere steps away.
- [10] Her beliefs did result in some self-aggrandisement. She displayed a more positive view of her potential future career than might have been realistic. Consequently, I must approach some of Ms. Pang's evidence around her career with some significant caution. While I do not accept some aspects of Ms. Pang's evidence to be credible or reliable, I did not find her, on an overall basis, to be deliberately dishonest.

Pre-Accident Background

- [11] I make the following findings of fact regarding Ms. Pang's pre-accident background based on the testimony of Ms. Pang and various lay witnesses.

Personal Life

- [12] Ms. Pang had a difficult childhood marked by alcoholism, sexual abuse, and domestic violence. She helped her mother separate from her father. Ms. Pang had a previous short marriage before beginning her relationship with Mr. Zaki. Ms. Pang also had a troubled relationship with Mr. Zaki. The early days of their relationship involved his substance abuse and financial dependence on her. Mr. Zaki was a part-time teacher, and the family lived on Ms. Pang's savings in addition to Mr. Zaki's income. When the family moved from Montreal to Chilliwack, Mr. Zaki obtained a full-time job. Ms. Pang and Mr. Zaki purchased a home, using Ms. Pang's savings to pay the down payment.
- [13] Their marriage was difficult from the outset in almost all respects, and Ms. Pang was unhappy. Mr. Zaki did not want Ms. Pang to work outside the home. For several years, Ms. Pang spent long days raising the children and attending to household and yard work while Mr. Zaki returned to university. Mr. Zaki's view of her role in the family led to conflict. The couple separated once before they ultimately separated in 2006, following an ugly scene involving the police. They divorced in 2009. They entered into a separation agreement in the summer of 2006, although the issues continued and the parties were involved in family litigation as recently as 2018.
- [14] After their separation and divorce, Mr. Zaki did not exercise parenting time regularly. He moved to Manitoba for a time. Ms. Pang was primarily responsible for raising their two children on her own.

Career

- [15] Ms. Pang graduated from university in China. She spoke Mandarin, Cantonese, and English fluently. She worked as an administrative assistant in China for five years until she was offered a significant promotion. She says she quit, instead of taking the promotion, because she did not wish to be embroiled in office politics. Ms. Pang then moved to Hong Kong to work as a teller at the Standard Chartered Bank. She worked there for three years, returning to China for one year before moving to Montreal in 1997.
- [16] Ms. Pang was a homemaker throughout her marriage to Mr. Zaki as he did not want her to work outside the home. After their separation, Ms. Pang took English courses. She was hired at Envision Financial but quit after one day due to child care concerns. She then worked at CIBC as a teller for one month. She says she realized, while she was at CIBC, that she had the perfect skills for financial planning. She had worked in banks in three countries and possessed language skills. When her CIBC supervisor told her that it may take several years before she could get a financial planning position at CIBC, Ms. Pang quit and immediately registered for financial planning courses.
- [17] Ms. Pang took courses in tax preparation and investment funds before getting a job at Investor's Group ("IG") in 2009. At IG, she worked as a consultant and had a license to sell mutual funds and life insurance. She was paid only on commission and responsible for finding her own clients. Ms. Pang eventually left IG in September 2013. In November 2013, she received the Certified Financial Planner ("CFP") Level 1 designation through the Financial Planning Standards Council.
- [18] Ms. Pang then joined Manulife in February 2014 to sell insurance. She also joined a company called Portfolio Strategy to sell mutual funds in February 2014. However, she says she realized that any clients she worked with at Portfolio Strategy would belong to the company. She only signed one client at Portfolio Strategy and decided not to continue working for the company.
- [19] Ms. Pang ultimately decided to start her own financial planning business. She registered Plenitude Financial as a sole proprietorship in March 2014. However, Ms. Pang says she was not able to dedicate her full attention to the development of the business in 2014 and 2015 because of difficulties with her eldest daughter. In 2014, Ms. Pang wrote the CFP Level 2 designation exam but did not pass. She testified that prior to the first accident, she was considering retaking the exam in the fall of 2016.
- [20] In addition to her financial planning work, Ms. Pang began providing translation services starting in 2011, although she did not have a formal translation certificate. She also wrote a book about financial success targeting wealthy Asian immigrants. She self-published her book in October 2013 and a later edition in December 2013. She says she primarily intended to use the book as a marketing tool, rather than to make money off of the book sales. She wrote and published several newspaper articles in the Epoch Times.

- [21] Ms. Pang says that prior to the accidents, she was highly ambitious and driven to succeed in her career. She described herself as a "superwoman". She had started her own business, while shouldering the parenting and household responsibilities virtually on her own. She says she worked more than full-time hours and was laying the groundwork for her career to really accelerate as soon as her children were finished school.
- [22] I find that, prior to the accidents, Ms. Pang was indeed working hard, but not to the extent that Ms. Pang claims. For example, Ms. Pang was asked in cross-examination how many hours she was working at IG, and she could not say on average how many hours she worked. Further, I do not accept that any plan to take the CFP Level 2 exam in the fall of 2016 was a serious intention. Ms. Pang testified that she was deciding between writing the CFP Level 2 exam and obtaining her designation as a certified translator, but she could only do one at a time. There was no evidence that she had planned to register for the CFP Level 2 exam or had begun to study again in a serious way.

Physical Health

- [23] Ms. Pang says she was in a "peak state" physically prior to the accidents. She testified at one point that she had gone to the gym 3-4 times a week since 2006, but other points in her direct evidence lead me to infer that she did not regularly exercise until the weeks leading up to the first accident. Ms. Pang says that before the accidents, she was attending boot camp and hot yoga classes because she was preparing for a backpacking trip to Europe.
- [24] I do not accept that Ms. Pang exercised 3-4 times a week consistently since 2006, given all her other stated activities and the totality of all the evidence. I do accept that she went to the gym and participated in physical activity, but that her claims were exaggerated. I also accept that when she was attending boot camp and yoga classes prior to the accident, she could do those exercises without any physical difficulty, and found herself enjoying physical fitness. There was no evidence that Ms. Pang suffered from any serious physical ailments prior to the accidents.

Mental Health

- [25] Ms. Pang experienced some mental health issues over the years, relating to her difficult relationship with Mr. Zaki. She sought the assistance of a psychiatrist and was diagnosed with anxiety and depression. She was in treatment on and off for approximately six years and, at various times, was treated with Celexa and Prozac. She appears to have generally recovered after her separation from Mr. Zaki. In December 2008, Ms. Pang's psychiatrist at the time, Dr. Ryan, wrote that he did not find it necessary for her to take antidepressants.

[26] In May 2014, Ms. Pang was going through a difficult time with her daughter. Ms. Pang visited Dr. Baby and requested to be referred to a psychiatrist. Dr. Baby made a referral, and Ms. Pang saw Dr. Arojoye, a psychiatrist, on one occasion in June 2014. Dr. Arojoye did not prescribe her any medications. Ms. Pang did not see a psychiatrist again until after the first accident.

Post-Accident Condition

Physical Health

[27] Ms. Pang submits that, after the accidents, she suffered from headaches, neck, shoulder and back pain, numbness in the left foot, loss of grip strength, dizziness, drowsiness, loss of balance, cognitive issues, and sleep disruption.

[28] Principally, she claims to suffer from headaches and neck pain as well as cognitive issues. She testified that she experienced headaches after the first accident, but they increased after the second accident to the extent that she refers to them as migraines. Now, she experiences headaches every day and takes a variety of medications to manage them. She says that acupuncture and massage treatments only provide temporary relief for a day or so before the pain returns. She also continues to experience neck pain constantly. Again, treatment helps but only provides temporary relief. She says her headaches and neck pain interfere with her ability to do chores, socialize, exercise, and sleep.

[29] She says she has also experienced cognitive issues since the accidents. She has problems with her memory and focus, and she reacts more slowly.

Mental Health

[30] Ms. Pang testified that she experienced mood changes after the first accident. She said she felt sad, disappointed and angry and like she "could not go on". Ms. Pang also testified that she began to experience nightmares after the first accident. She says she continues to have nightmares every night. She has woken up in the night screaming and says she often does not want to go back to sleep in case she has a nightmare again.

[31] Dr. Baby testified that Ms. Pang was like a different person with the same name before and after the accidents. After the accidents, Dr. Baby observed that Ms. Pang cried frequently and became more emotional during her visits.

[32] Glen Perry, Ms. Pang's partner, testified that Ms. Pang experiences anxiety when they drive in a car together. She has episodes where she gasps and cannot breathe. Mr. Perry also testified that Ms. Pang will wake up in the night, agitated and crying.

Work and Personal Life

- [33] Ms. Pang says she has been unable to work since the accidents. She took on a translation project but could not meet her client's deadline. She says she has lost confidence in her work and experiences memory issues. Mark O'Nions, a lawyer who had previously referred translation work to Ms. Pang, testified that he stopped referring translation work to Ms. Pang because he believed she no longer had the focus necessary to do the job. Ms. Pang let her insurance licence lapse after the second accident because she says she lost hope that she would get better.
- [34] Ms. Pang says that the accidents have also impacted her social relationships. She testified that she cut off many friendships because she was frustrated with herself and did not want people to see her in her post-accident state. The accidents also impacted Ms. Pang's family life. She testified that in March 2016, a few weeks after the first accident, she had an altercation with her oldest daughter. Ms. Pang ended up calling social services and asking them to remove her daughters from her care temporarily. Social workers attended at her home, and the children stayed with a family friend for a few days. Ms. Pang was taken to the hospital by the police where she was assessed by a psychiatrist.
- [35] I agree with Ms. Pang's counsel that Ms. Pang recognized her limitations at that point and took steps to ensure her children's safety. I commend her. Despite her extreme frustration and anger with her daughter, and her physical pain due to her injuries, her instinct was to ensure that her children were safe.

Medical Experts

- [36] Ms. Pang retained a number of experts: Dr. Jung, a psychologist; Dr. Lu, a psychiatrist; Dr. Cameron, a neurologist; Dr. Sahjpaul, a neurosurgeon; and Dr. Arseneau, an internal medical specialist. The defendants called Dr. Sekyi-Otu, an orthopedic surgeon. These experts did not agree on their diagnoses for Ms. Pang.

Dr. Jung

- [37] Dr. Jung is Ms. Pang's treating psychologist. He authored two reports dated May 3, 2019, and July 5, 2019. Dr. Jung took over Ms. Pang's treatment from Dr. Penner, who initially assessed Ms. Pang after the first accident. Dr. Jung began seeing Ms. Pang in June 2016, weekly for a time and then monthly.
- [38] Dr. Jung considered a report completed by Dr. Penner in May 2016. Dr. Penner assessed Ms. Pang after the first accident and found that Ms. Pang was experiencing emotional and psychological difficulties as a result of the first accident, including thoughts of worthlessness and suicidal ideation. Dr. Penner had diagnosed Ms. Pang with Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder.

- [39] Dr. Jung opined in his first report in May 2019 that Ms. Pang met the DSM-5 diagnosis of Major Depressive Disorder (Severe) and Other Specific Trauma and Stressor-Related Disorder (significant trauma symptoms that do not meet the full criteria for PTSD). In his first report, Dr. Jung diagnosed Ms. Pang provisionally with Somatic Symptom Disorder (SSD) (Severe) with predominant pain and stated that he would confirm this diagnosis after reviewing subsequent medical reports regarding Ms. Pang's physical injuries.
- [40] Dr. Jung opined that Ms. Pang's prognosis respecting returning to her pre-accident psychological condition work is poor and that but for the accident, she would not have developed Major Depressive Disorder (Severe), Other Specific Trauma and Stressor-Related Disorder, and SSD (Severe) with predominant pain.
- [41] Dr. Jung prepared an addendum report dated July 5, 2019, in order to review reports of the other experts. In his second report, Dr. Jung confirmed his opinion that Ms. Pang met the DSM-5 criteria for SSD. He noted that Ms. Pang had "excessive thoughts, feelings and behaviours" about her somatic symptoms and associated health concerns. He opined that she met two of the three criteria for SSD, which are "disproportionate and present thoughts about the seriousness of one's symptoms" and "persistently high level of anxiety about health concerns".
- [42] In his second report, Dr. Jung reconsidered his prior diagnosis of SSD with predominant pain. He changed his diagnosis to SSD (without predominant pain), noting that while Ms. Pang's distress relates to her cognitive functioning and its impact, it is not exclusively related to her pain. Dr. Jung disagreed with Dr. Arseneau, who did not believe that Ms. Pang met the criteria for SSD.

Dr. Lu

- [43] Dr. Shaohua Lu is a psychiatrist who tendered two reports dated September 16, 2017, and April 20, 2019. He assessed Ms. Pang on September 5, 2017, and April 9, 2019.
- [44] In Dr. Lu's 2017 report, he noted Ms. Pang's "complex" psychiatric history, including that she had previously been treated by Dr. Moussa, a psychiatrist, for depression and anxiety. Dr. Lu opined that, although Ms. Pang had demonstrated resilience, she remained "highly vulnerable" due to her previous instances of depression. Dr. Lu also believed that Ms. Pang was at risk of a relapse of her depression because her work and productivity were integral to her personal identity and self-worth. According to Dr. Lu, if Ms. Pang experienced a disruption in her working capacity, it would have a disproportionate impact on her psychological well-being and would likely lead to a relapse of her depression.
- [45] Dr. Lu considered Ms. Pang's visit to Dr. Arojoye in 2014. He concluded that Ms. Pang did not have a full relapse of her major depression in 2014 or 2015, as she did not require antidepressants or psychological treatment. At the time of the first accident, Ms. Pang was not experiencing depression.

- [46] Dr. Lu opined in his first report that Ms. Pang had a full relapse of her major depression after the first accident. She also had some features of SSD, including a preoccupation with her cognitive and pain-related symptoms. However, she did not fully meet the criteria for SSD. Dr. Lu also found she was unlikely to have suffered a traumatic brain injury or significant concussion in the first accident. Dr. Lu found that Ms. Pang's depression was affecting her capability to work and opined that if Ms. Pang did not regain her working capacity within 12 months, she was at high risk of permanent disability.
- [47] Dr. Lu completed a second report in April 2019. He found that the additional pain and psychological stressors from the second accident reinforced Ms. Pang's SSD. He notes that she fully meets the diagnostic criteria for SSD, experiencing intense psychological distress and preoccupation with her physical health. According to Dr. Lu's second report, Ms. Pang remains occupationally disabled, her prognosis is poor, and she has a low chance of returning to gainful employment.

Dr. Cameron

- [48] Dr. Cameron is a neurologist, who prepared a report dated November 13, 2016. He evaluated Ms. Pang about six months after the first accident. His report indicates that he reviewed records from Dr. Baby, Langley Hospital, and a report of Dr. Jung dated May 17, 2016. I assume that Dr. Cameron meant Dr. Penner's report to Dr. Jung of that date.
- [49] His report includes the assumptions that Ms. Pang had been diagnosed with clinical depression in 2014 and 2015, and that she had been diagnosed as suffering from a concussion by the emergency physicians at the time of the first accident.
- [50] Dr. Cameron found that Ms. Pang did suffer a mild traumatic brain injury in the first accident. Within a day or two of the accident, Ms. Pang reported issues with memory and concentration, irritability, dizziness, and other cognitive symptoms. Dr. Cameron opined that these symptoms were due to post traumatic brain injury syndrome.
- [51] However, Dr. Cameron's report notes that it was difficult to determine to what extent Ms. Pang's cognitive issues were due to the mild traumatic brain injury, or due to her pain or psychological issues. He eventually opined that Ms. Pang's cognitive problems were initially caused by a mild traumatic brain injury, but her pain and psychological issues are contributing to her ongoing cognitive issues.
- [52] Dr. Cameron deferred to the psychological experts and noted that if Ms. Pang's psychological issues resolved but her cognitive issues remained, then he believed the cognitive issues were due to the mild traumatic brain injury. I note that Ms. Pang's psychological issues have not resolved.

Dr. Sahjpaul

- [53] Dr. Sahjpaul is a neurosurgeon who prepared a report dated May 8, 2017. He concluded that Ms. Pang suffered a number of injuries due to the accident. He found that Ms. Pang's headaches were caused by neck injuries from the accident "related to concussion". He found that she had "symptoms consistent with concussion", but not specifically a concussion. He opined that her neck and low back pain, and hand and foot numbness, were caused by the accident. To any extent that Ms. Pang suffered from low back pain prior to the accident, it was minor and significantly aggravated by the accident.
- [54] Dr. Sahjpaul's report noted that Ms. Pang may benefit from a pain management program, although he noted that these treatments usually only provide partial or temporary relief.

Dr. Arseneau

- [55] Dr. Richard Arseneau is an internal medicine specialist who tendered a report dated April 13, 2019, after assessing Ms. Pang on April 4, 2019. Dr. Arseneau is a clinical professor at UBC, with an academic practice at St. Paul's Hospital. He is the Director of Program Development and a clinician at the Complex Chronic Diseases Program at BC Women's Hospital.
- [56] On the day that Dr. Arseneau was scheduled to testify, the defendants objected to the admissibility of his report in whole or in part, on the basis that he makes psychiatric diagnoses and recommendations for treatment when he is not a psychiatrist. The plaintiff sought to qualify Dr. Arseneau to opine on the intersection of chronic pain and psychiatric conditions identified in his report. The plaintiff argued that the court routinely accepted doctors as experts in fields of medicine other than their own, based on their experience. While I did not agree with the plaintiff's argument, I ruled that Dr. Arseneau's experience was sufficient for the threshold admissibility requirement, but that counsel could make submissions on what weight ought to be placed on Dr. Arseneau's report.
- [57] In preparing his report, Dr. Arseneau physically examined Ms. Pang. He reviewed, among other things, Ms. Pang's clinical history as reported by her and records from the emergency room, Dr. Baby and Dr. Arojoye, and the reports of Drs. Lu, Jung, and Cameron. I note that, in some respects, the information Ms. Pang gave to Dr. Arseneau did not line up with the facts I have found at trial. For example, she told Dr. Arseneau that she was working "between 50 and 60 hours per week". I have already noted that Ms. Pang tended to exaggerate, especially regarding her career, and that I must approach her evidence with caution.
- [58] Dr. Arseneau opined that Ms. Pang sustained various injuries from the accidents, including myofascial pain syndrome of the neck, shoulders, and upper back; fibromyalgia; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS); tension headaches and migraines; non-cardiac chest pain; and aggravation of pre-existing depression and anxiety.

- [59] Dr. Arseneau disagrees with Drs. Lu and Jung regarding their diagnosis of SSD. He notes patients with SSD have somatic symptoms that are very distressing or result in significant disruption of functioning, as well as excessive and disproportionate thoughts and behaviours about their symptoms. In Dr. Arseneau's opinion, Ms. Pang's symptoms are not excessive or disproportionate. Further, he noted that some studies have indicated that a diagnosis of SSD is less reliable when a patient has fibromyalgia, which, in his opinion, Ms. Pang has.
- [60] Dr. Arseneau also found that Ms. Pang met the criteria for PTSD.
- [61] Respecting causation, Dr. Arseneau opined that the physical and psychological trauma of the first accident caused Ms. Pang's injuries, including ME/CFS, fibromyalgia, headaches, and PTSD. Dr. Arseneau expects that Ms. Pang will remain disabled indefinitely since she has experienced symptoms for over three years. She is most limited by her cognitive symptoms and fatigue, and, in his opinion, these are unlikely to improve.

Dr. Sekyi-Otu

- [62] Dr. Sekyi-Otu is an orthopaedic surgeon who prepared a report for the defence on September 11, 2017, between the first and second accidents. Dr. Sekyi-Otu found no objective findings in his physical examination. He opined that Ms. Pang was "pain focused, and anxious".
- [63] Dr. Sekyi-Otu diagnosed Ms. Pang with "uncomplicated myofascial strains to the cervical, thoracic, and lumbar spines, and to the shoulder girdles". He opined that her symptoms were likely caused by the accident but could find no objective signs of pathology.
- [64] He did not expect Ms. Pang to need any treatment beyond a self-directed home exercise program and some non-narcotic pharmacological medication. He expected Ms. Pang to be able to work, with typical time off for musculoskeletal injuries in the six to 12 week period. He saw no objective signs that would account for her reported limitations and disability. He observed "pain magnification behaviours".
- [65] I place no weight on Dr. Sekyi-Otu's opinion, which was focused only on objective signs. Given that Ms. Pang's injuries are largely psychological and soft tissue, objective signs are unlikely. Additionally, Dr. Sekyi-Otu opined that Ms. Pang could return to work within six to 12 weeks from his assessment of her in 2017. As of trial, she had not returned to work, which was consistent with the prognosis given by other medical experts.

Conclusion on the Medical Evidence

- [66] As outlined above, Ms. Pang's experts disagreed on her diagnosis. The main dispute is between Drs. Lu and Jung, who both diagnosed her with SSD, and Dr. Arseneau, who disagrees with that diagnosis. Dr. Arseneau diagnosed her with PTSD, a diagnosis not accepted by Dr. Lu.

- [67] For the reasons that follow, I prefer the evidence of Drs. Lu and Jung over Dr. Arseneau and accept the diagnosis of SSD.
- [68] Drs. Lu and Jung have specific expertise in psychiatry and psychology based on their education and experience. Dr. Lu, in particular, has experience with patients experiencing chronic pain and depression. He was the supervisor of the complex pain program at Vancouver General Hospital.
- [69] Dr. Arseneau is an internal medicine specialist. He is the Director of Program Planning, Complex Chronic Diseases Program at BC Women's Hospital, a position he has held since 2013. The Complex Chronic Diseases Program addresses fibromyalgia and other conditions, and the vast majority of patients have psychological or psychiatric symptoms.
- [70] While Dr. Arseneau has some training in mental health issues, it is not as extensive of that of Drs. Lu and Jung. Dr. Arseneau is a member of the American Group Psychotherapy Association and has a certification from Group Process Institute (Vancouver). These designations do involve course work and some work under the supervision of a psychiatrist, but they are not equivalent to the university degrees and years of formal training and experience held by Drs. Lu and Jung. Additionally, Dr. Jung has also spent more time with Ms. Pang, as her treating psychologist.
- [71] Counsel for Ms. Pang argued that Dr. Arseneau's expertise in psychiatry should be accepted, citing *Sekhon v. Gill*, 2019 BCSC 811. In *Sekhon*, the plaintiff's mental health was not a central feature of the case, and Justice Smith was not asked to rule specifically on Dr. Arseneau's qualifications. Justice Smith noted that there is often overlap between different areas of expertise, and that Dr. Arseneau was qualified to "comment on the emotional and psychological effects of chronic pain", not necessarily that he was qualified to provide psychiatric evidence: *Sekhon* at paras. 68-69.
- [72] Accordingly, I prefer the evidence of Drs. Lu and Jung where they conflict with Dr. Arseneau's opinions regarding Ms. Pang's mental health. I place no weight on the parts of Dr. Arseneau's report that are in contradiction to Drs. Lu and Jung.
- [73] I accept the diagnoses of Drs. Lu and Jung that Ms. Pang has SSD. I reject Dr. Arseneau's opinion that Ms. Pang has met the criteria for PTSD. Dr. Lu noted that although Ms. Pang showed some of the symptoms of PTSD, Dr. Lu did not diagnose her with PTSD because of the overlapping symptoms of depression and PTSD. I prefer the evidence of Dr. Lu in this regard.
- [74] The medical experts also disagreed in their diagnoses of concussion or mild traumatic brain injury. Dr. Cameron said that Ms. Pang's cognitive problems were initially caused by a mild traumatic brain injury, but noted that her ongoing cognitive issues could be due to her pain and psychological symptoms. Dr. Lu opined that a traumatic brain injury was unlikely. Dr. Arseneau suggested that mild traumatic brain injury symptoms typically resolve in a year, and that Ms. Pang's ongoing issues did not suggest a brain injury. I find that even if Ms. Pang

did suffer a brain injury in the accident, it was minor and I accept the evidence of Drs. Lu and Arseneau that Ms. Pang's ongoing cognitive issues are not due to a brain injury.

Causation

- [75] Causation is established where the plaintiff proves on a balance of probabilities that the defendant caused or contributed to the injury. The general test for causation is the "but for" test; that is, the plaintiff's injury would not have occurred but for the negligence of the defendant: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-14. A defendant does not have to be the sole cause of the harm to be found liable: *Athey* at para. 19.
- [76] If the plaintiff suffers a psychiatric injury that is consequential to physical harm caused by the defendant, the defendant is also liable for the psychiatric injury, even if the psychiatric injury was unforeseeable: *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258 at para. 74.

Physical Symptoms

- [77] Ms. Pang claims the accidents caused her headaches, shoulder and back pain, dizziness, and cognitive issues. There is no evidence that Ms. Pang suffered from physical complaints in any significant way prior to the accident. Based on the evidence of Dr. Sahjpal, I accept that even if Ms. Pang suffered from low back pain prior to the accident, it was minor and significantly aggravated by the accident.
- [78] It appears that by the time of trial, Ms. Pang's main complaints were headaches and neck pain. I accept the evidence of Dr. Arseneau that Ms. Pang suffers from myofascial pain syndrome of the neck, shoulders, and upper back; fibromyalgia; migraines; and tension headaches, and that these injuries were caused by the accidents. I accept that the defendants were a cause of Ms. Pang's injuries. I also accept the evidence of Dr. Arseneau that Ms. Pang's cognitive symptoms can be explained by myofascial pain syndrome and fibromyalgia, and are therefore also caused by the accidents.

Psychological Symptoms

- [79] The nature and extent of Ms. Pang's pre-existing depression is relevant to the assessment of damages. Essentially, If Ms. Pang has established that the accident caused a relapse of her depression, the defendants are fully liable for the resulting injury, subject to any reduction for the effects of her pre-existing condition: *L.A.F. v G.M.F.C. Ltd.*, 2019 BCSC 2252 at para. 119. This can be explored through the doctrines of "thin skull" and "crumbling skull".
- [80] A plaintiff is categorized as a "thin skull" where the plaintiff's injuries are unexpectedly severe owing to a pre-existing condition. In that case, the defendant must take the victim as they find the victim, and the defendant is, therefore, liable for the full extent of the plaintiff's injuries. A plaintiff is categorized as a "crumbling skull" where the plaintiff has a pre-existing condition, and there is a measurable risk that the plaintiff would have

experienced the debilitating effects of the pre-existing condition even if the accident had not occurred. In that case, the defendants are not liable for the effects of the pre-existing condition that the plaintiff would have experienced anyway: *Athey* at paras. 34-35.

- [81] The distinction between a "thin skull" and a "crumbling skull" is important because the defendants are only required to restore the plaintiff to their original position, not to compensate the plaintiff for damages that they would have suffered anyway: *Blackwater v. Plint*, 2005 SCC 58 at para. 78.
- [82] Whether the plaintiff is a "crumbling skull" need not be proved on a balance of probabilities. If the court finds there is a measurable risk that the plaintiff would have experienced debilitating effects from their pre-existing condition, the court will reduce damages based on the relative likelihood: *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para. 48.
- [83] The parties disagree if Ms. Pang is a "thin skull" or "crumbling skull" plaintiff, based on her prior psychological history. The key issue to address is whether there is a measurable risk that Ms. Pang would have had a relapse of depression in any event.

Measurable Risk of Relapse of Depression

- [84] Ms. Pang argues that she is a "thin skull", not a "crumbling skull". While she agrees her past abuse and history of depression made her vulnerable, she says she would not have suffered a relapse of depression without the accident. The defendants argue that Ms. Pang is a "crumbling skull" and she would have suffered a relapse of depression even if the accident had not occurred.
- [85] To assess if there was a material risk that Ms. Pang would have suffered a relapse of depression requires a consideration of the medical evidence.
- [86] The defendants cite *Dhaliwal v. Kublick*, 2019 BCSC 1285 as an example where the evidence showed that the plaintiff's condition would have degenerated even without the accident. In *Dhaliwal*, the evidence showed that the plaintiff was "steadily getting worse", and the plaintiff's injuries could not be blamed on the accident: para. 72.
- [87] Dr. Lu's first report acknowledged that Ms. Pang was at risk of relapse of depression. As stated above, Dr. Lu opined that because Ms. Pang's work and productivity were integral to her personal identity, a disruption in her working capacity could lead to a relapse of her depression.
- [88] Dr. Lu testified that if someone has an episode of major depression, they have a 33% chance of a relapse within their life, although the vast majority of relapses occur within the first two years. According to Dr. Lu, the longer an individual can remain stable, the less likely it is that their depression will relapse.

- [89] Dr. Lu was clear that Ms. Pang's psychological issues in 2014 and 2015 were not a relapse of her prior depression. Even though she was experiencing difficulties, she never reverted back to her previous functional impairment, she was not prescribed medication, and she was not suicidal. Dr. Lu pointed to the fact that Ms. Pang got through this difficult time without a relapse of depression as an indication that overall her risk of relapse would be low.
- [90] I accept the evidence of Dr. Lu and conclude that Ms. Pang, although she was vulnerable, would not have experienced a relapse of her major depression in any event. This is illustrated by the fact that she had a difficult time in 2014 and 2015 but was able to "get back on track", in Dr. Lu's words, without having a full relapse of depression. There was also no evidence that Ms. Pang would have experienced a loss of her capacity to work in any event. The defendants point to the fact that Ms. Pang's business was struggling prior to the accidents. However, Dr. Lu points to Ms. Pang's vulnerability stemming from her capacity to work, not her work generally. Ms. Pang had experienced many career transitions since rejoining the workforce, but did not experience a relapse of depression then.
- [91] Therefore, I find that Ms. Pang was a "thin skull" rather than a "crumbling skull". The defendants must take Ms. Pang as they find her, and are fully liable for the extent of Ms. Pang's psychological symptoms.

Original Position

- [92] The plaintiff and defendants disagree over what Ms. Pang's original position was before the accidents. Ms. Pang says she had recovered from her depression and she was able to live her life despite her past difficult experiences. Even though she had suffered sexual abuse as a child and a traumatic relationship with Mr. Zaki, she was parenting her daughters, working as a financial advisor and translator, and she had written a book. The defendants argue that Ms. Pang's past trauma from her difficult childhood, marriage, and divorce is inherent in her original position.
- [93] I find that Ms. Pang's original position must take her previous mental health issues into account. For example, although it did not amount to a full relapse of her depression, Ms. Pang submitted that her difficulties dealing with her daughter affected her career in 2014 and 2015. Despite these difficulties, Ms. Pang was resilient and generally able to work while raising her two children as a single mother.

Damages

Non-Pecuniary Damages

- [94] The purpose of non-pecuniary damages is to compensate the plaintiff for intangible losses such as pain and suffering. The Court of Appeal set out the list of factors to consider in determining an award for non-pecuniary damages in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46. These factors include the age of the plaintiff; the nature of the injury; severity and duration of the pain; disability; emotional suffering; impairment of life; impairment of

family, marital and social relationships; impairment of physical and mental abilities; and loss of lifestyle. The plaintiff's stoicism is a factor that should not penalize the plaintiff.

- [95] Other cases can provide a rough guide for calculating non-pecuniary damages, but each case is unique and depends on its own facts: *Trites v. Penner*, 2010 BCSC 882 at para. 189.
- [96] Before the accident, Ms. Pang took care of her home and two children. She was trying to grow her small financial planning and translating businesses. Although she had experienced negative effects from mental health difficulties, she was generally able to function prior to the accident.
- [97] After the accidents, Ms. Pang suffered a relapse of her major depression. She had an altercation with her daughter. Her mental health challenges have continued to trial. She also experiences pain. She is unable to work. Her prognosis is poor, and she is unlikely to return to work.
- [98] The plaintiff submits that an appropriate award for non-pecuniary damages is \$190,000 and relies on *Kallstrom v. Yip*, 2016 BCSC 829; *Chowdhry v. Burnaby (City of)*, 2008 BCSC 1337; and *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81.
- [99] Generally, the cases provided by the plaintiff reflect cases that are more extreme than Ms. Pang's. In *Kallstrom*, the plaintiff attempted suicide on three occasions after the accident. The plaintiff in *Chowdhry* was "catatonic" for six months following the accident. In *Pololos*, the plaintiff suffered from more serious chronic physical injuries in addition to psychological symptoms.
- [100] The defendants submit that the range of non-pecuniary damages should be \$90,000-\$105,000 and rely on *Partridge v. Buskop*, 2019 BCSC 459; *Westergaard v. MacLean*, 2017 BCSC 772; and *Chevalier v. Gray*, 2018 BCSC 1833.
- [101] In *Partridge*, the court found that the plaintiff's depression and anxiety would have intensified in any event, and the symptoms from the accident only lasted for two years. In *Westergaard*, the non-pecuniary damages took into account that the plaintiff had a serious health diagnosis prior to the accident. I find *Chevalier* is the most similar to Ms. Pang's case. In *Chevalier*, while the plaintiff did not have a "pristine" original position, the accident significantly impacted every aspect of her life, including her work and relationships.
- [102] Taking into account Ms. Pang's original position and her position after the accidents, I award Ms. Pang \$105,000 in non-pecuniary damages.

Loss of Past Earning Capacity

- [103] A claim for past loss of income is for the value of the work that Ms. Pang would have performed but was unable to perform because of the accidents: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30. The test for determining hypothetical past events, including what Ms. Pang would have earned if the accidents had never happened, is whether there is a real and substantial possibility that the events would have occurred: *Rousta v. MacKay*, 2018 BCCA 29 at para. 14.
- [104] The defendants submit that Ms. Pang's past loss of income should be based on her net income in the best year of her financial planning career. In 2012, Ms. Pang reported \$12,340 in net business income from IG. Based on that figure, the defendants submit that \$42,000 is a reasonable sum for past wage loss (3.5 years at \$12,340 per year).
- [105] Ms. Pang seeks \$100,000 for past loss of earning capacity. She argues that there were many reasons why her pre-accident earnings were low, including that she was in the process of setting up her own business, writing a book, studying, pursuing her translation license, and going through a difficult time with her daughter. She submits that once she completed her licensing requirements, she would have more time to devote to her business and more credentials to attract clients.
- [106] Alistair Milne, Ms. Pang's former colleague at IG, testified that it can take six years for a consultant to build a book of business. Ms. Pang started in the financial planning industry at IG in 2009. Based on that evidence, by 2015, she could have been past the "building the business" stage of her career. By leaving IG and starting Plenitude, she had to start over and begin building her client base again. It was clear from Mr. Milne's testimony that it can be difficult to succeed in the financial planning industry.
- [107] Ms. Pang's best year of income was in 2012 at IG, where she earned just over \$12,000 after deducting business expenses, but before paying taxes. Ms. Pang admitted on cross-examination that after she left IG, her income was lower because she was trying to build her new business and she was starting "from zero". After the accidents, her earnings decreased further. She reported \$1,492 in net business income in 2017 and nothing in 2018. Her income from 2010 to 2014 is set out in the chart below:

Gross Income

Total Taxable Income

Net Income from Financial Planning

2010

\$27,319

\$5,211

\$3,758 (IG)

2011

\$19,969

\$711

\$2,228 (IG)

2012

\$28,350

\$12,275

\$12,340 (IG)

2013

\$19,813

\$4,886

\$4,232 (IG)

2014

\$10,580

\$2,844

\$2,414 (Plenitude and translation work)

[108] Ms. Pang did not file her 2015 tax return on time. Although she testified that her occupational therapist eventually helped her to file her tax returns after the accidents, Ms. Pang's 2015 tax return was not in evidence. While her T4A forms from 2015 show gross income of \$2,240 from Manulife, \$13,360 from DiverseCity, and \$683 from Abbotsford Community Services for a total gross income of \$16,283, it is unclear what her net taxable income would have been in 2015 after business deductions. Similarly, for 2016, the year of the first accident, Ms. Pang did not file a tax return. Ms. Pang agreed that 2014-2016 were years with either little to no income, but insisted that she planned for this level of income in 2014 and 2015.

[109] Ms. Pang was asked on cross-examination if she ever earned more net income that she did in 2012. Ms. Pang did not give a straight answer, but said that after she left IG and started a new business, she expected to have business losses for the first few years. I accept that Ms. Pang earned the most income in 2012.

- [110] I find that \$100,000 sought by Ms. Pang is simply unrealistic, given her past earnings, as to what she would have earned but for the accident. There is no evidence that her earnings would have increased so dramatically. Although Ms. Pang said she was planning to try for the CFP Level 2 designation in fall 2016, there was no evidence that she had taken any steps to register for the exam or begin studying. Even if she had, there was no guarantee that she would pass the exam or that achieving the certification would grow her business substantially.
- [111] Ms. Pang argues that she could not devote herself to her career in 2014 and 2015 due to the difficulties with her eldest daughter. I find that these parenting issues did impact Ms. Pang's career, but not to the extent that she claims. I make this finding, in part, because of the lack of evidence respecting the nature of the difficulties in the relationship between Ms. Pang and her daughter, and any specifics as to how they impacted Ms. Pang and her career for such a prolonged period. Since Ms. Pang sought treatment from Drs. Baby and Arojoye, I find that she was also encountering difficulties generally, even if these did not result in a full relapse of depression. The defendant's sum of \$12,000 is somewhat low because it does not take into account the translation work that Ms. Pang was doing in addition to her financial planning work and her difficulties with her daughter.
- [112] I have also considered Ms. Pang's career overseas, before she had children to care for, in considering her earning capacity. Ms. Pang testified that after finishing university, she had worked in China as an administrative assistant for five years when she was offered a promotion to be "one of the top five bosses" within that company of 1000 employees. Such a position was typically given to individuals with 30 years' experience; Ms. Pang was only 24 years old. Ms. Pang testified that she rejected the promotion and quit the company on the same day because she did not want to be embroiled in office politics. As I have stated above, I must approach Ms. Pang's evidence regarding her career with caution. In any event, Ms. Pang then worked as a bank teller in Hong Kong for three years, and then at a bank in China for one year before immigrating to Canada. None of this evidence shows a real and substantial possibility that Ms. Pang's income would have increased dramatically but for the accidents.
- [113] I find there is a real and substantial possibility that Ms. Pang's income would have risen slightly but for the accident, and that she would have made \$15,000 per year in the three and a half years since the accidents. Considering that Ms. Pang has only reported \$1,492 in income since the accidents, I award \$51,000 for loss of past earning capacity.

Loss of Future Earning Capacity

- [114] A claim for loss of future earning capacity raises the questions of whether Ms. Pang's earning capacity has been impaired by her injuries, and what compensation should be awarded for the financial harm that will occur over time: Partridge at para. 181. Both parties accept that Ms. Pang's earning capacity has been impaired by the accidents. As with past loss of earning capacity, there must be a real and substantial possibility that the future events would occur: Rousto at para. 14.
- [115] Ms. Pang seeks \$750,000 for loss of future earning capacity, arguing that she planned to work for 16 more years to age 67. She notes that this figure amounts to less than \$50,000 per year.
- [116] The defendants propose an award of \$120,000, using the plaintiff's past best annual income of about \$12,000 over ten years. The defendants note that this figure specifically does not take negative contingencies into account.
- [117] Ms. Pang gave evidence that her goal was to earn \$50,000 in 2016 and then \$100,000 in 2017. Given the lack of evidence as to how that might be a realistic goal, and given her past earnings, I do not find there to be a real and substantial possibility that Ms. Pang would have earned those sums but for the accidents. I think it is more likely that she would have earned much less than \$50,000 as a financial planner and translator.
- [118] Ms. Pang and her daughter gave evidence that Ms. Pang was "non stop doing something" and was a "workaholic". However, given that Ms. Pang was self-employed and did not have to report to anyone or have specific hours of work, there is little evidence respecting the actual time devoted to working, including building her business, or the efficiency or effectiveness of that time. I find that Ms. Pang had lofty goals for her business, but there is little concrete evidence that these goals would have come to fruition. I have to consider her many years of making a modest income before the accidents despite her efforts to grow a business. In addition, I have considered her limited history in Canada as an employee in considering whether she could have been successfully employed by a third party.
- [119] Ms. Pang submits that once her children were grown up, she would have more time to devote to growing her business. I accept this is a positive contingency to take into account, but I also note there are negative contingencies, including that conflict with her children or Mr. Zaki, or her youngest daughter's health issues may have impacted her ability to work as it did in the past.
- [120] Given Ms. Pang's past working history, I do not accept that she would have worked until age 67. I find that Ms. Pang would likely have worked for 12 more years, to age 63. I find that Ms. Pang would have grown her financial planning and translation businesses and surpassed her past income from IG, although not to the extent suggested by Ms. Pang. Considering the evidence and possible contingencies, I award her \$180,000 for loss of future income earning capacity, based on \$15,000 per year for 12 years.

Cost of Future Care

[121] To make an award for cost of future care, the claims must be medically justified and the claims must be reasonable: *Tsalamandris v. McLeod*, 2012 BCCA 239 at para. 63, citing *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33.

[122] Ms. Pang seeks \$700,000 for cost of future care. She relies heavily on the report of Dr. Arseneau, whose extensive treatment recommendations were calculated by Mr. Lakhani, an economist, to provide the present value. The total cost of Dr. Arseneau's recommendations is \$1,494,145.

[123] The cost of future care items include the following:

Homemaking service:

\$174,690

Medications:

\$822,539

Supplements:

\$211,646

Acupuncture, physical therapy, dietician, massage, and others:

\$446,270

Various therapy (cognitive behavioural therapy, acceptance commitment therapy, eye movement desensitization and reprocessing therapy):

\$13,453

Neurofeedback:

\$4,456

Transcranial stimulation:

\$28,127

Hyperbaric oxygen treatment:

\$51,205

[124] The defendants dispute a significant amount of the above claims on the basis that Dr. Arseneau is not qualified to make the treatment recommendations for psychiatric diagnoses and the recommendations of Drs. Lu and Jung should be preferred. The defendants submit the proper amount for cost of future care is \$35,000 for cognitive behavioural therapy, massage therapy, a chronic pain program, and a gym program.

- [125] Dr. Arseneau's report recommended acupuncture twice weekly at a cost of \$100 each time. Mr. Lakhani calculated the present value of this at \$253,156. I accept Dr. Arseneau's evidence that acupuncture would benefit Ms. Pang. However, the amount submitted by Ms. Pang far exceeds what is reasonable. Her claim for special damages includes \$3,290 for acupuncture from the accidents to the trial. I find that a reasonable amount for acupuncture is \$2,400.
- [126] Dr. Arseneau recommended the following therapies: 20-30 sessions of cognitive behavioural therapy at \$200 per session; 20-30 sessions of acceptance commitment therapy at \$200 per session; and 12-24 sessions of eye movement desensitization and reprocessing therapy at \$200 per session.
- [127] Drs. Jung and Lu did not recommend acceptance commitment therapy or eye movement desensitization reprocessing therapy; therefore, I reject these claims.
- [128] The defence accepts that cognitive behavioural therapy is appropriate at \$4,946.
- [129] Drs. Jung and Lu both recommended monthly psychological intervention. Dr. Jung also recommended an additional six sessions per year for the next four years, to deal with crisis situations. I accept Dr. Jung's recommendations for psychological intervention for a four-year duration at 18 sessions per year, at a cost of \$200 per session. I find there is overlap between the cognitive behavioural therapy recommended by Dr. Arseneau and the psychological intervention recommended by Drs. Lu and Jung. I award Ms. Pang \$14,400 for psychological services, including for cognitive behavioural therapy.
- [130] Dr. Arseneau recommends massage therapy at a cost of \$63,289 and \$4,966 for physiotherapy. Ms. Pang has indicated that she has received benefits from massage therapy, and the defendants accept that an award for some massage therapy is appropriate. However, Ms. Pang testified that she tried physiotherapy and it was of no real assistance to her. I accept Dr. Arseneau's recommendation for massage therapy and award Ms. Pang \$2,400.
- [131] Dr. Arseneau recommended that Ms. Pang participate in a chronic pain program. The defendants agree that an award for participation in a chronic pain program is appropriate. I note that Dr. Sahjpaul also recommended that Ms. Pang participate in a pain management program. I award \$10,000 for a chronic pain program.
- [132] Dr. Arseneau also recommends neurofeedback, transcranial stimulation, and hyperbaric oxygen treatment. The defendants submit that these treatments are not reasonably necessary for Ms. Pang's condition and they are speculative. I agree with the defendants. Further, it was unclear on the report what conditions these treatments were to assist with exactly, other than "pain and cognitive symptoms".
- [133] Dr. Arseneau proposes a wide array of medications for Ms. Pang. I agree with the defendants that the list of medications proposed in Dr. Arseneau's report are unreasonable. The proposed cost of the medications assumes that all medications will be taken

simultaneously for the rest of Ms. Pang's life, which is clearly not the case. Dr. Arseneau's report even notes that the approach to determining which medications are appropriate is "trial and error". Some of the medications suggested such as lidocaine and ketamine are \$1,800 and \$2,500 respectively per treatment at 4-17 times per year, are excessive, especially when there was little to no evidence for the efficacy of these treatments for Ms. Pang's conditions. I accept that some medication is necessary for Ms. Pang to treat her depression, anxiety, and chronic pain. However, the numbers in Mr. Lakhani's report are unreasonable and assume that Ms. Pang will take all recommended medications for the rest of her life. Of the list of eight medications, only one had been tried by Ms. Pang, that being Cymbalta, at a cost of \$2,250 annually. I award Ms. Pang \$15,000 for medication for depression, anxiety, and chronic pain.

[134] Ms. Pang seeks treatment from a naturopath and associated naturopathic supplements. Dr. Arseneau says that a number of naturopathic supplements are helpful in treating pain, fatigue, and cognitive symptoms. I award Ms. Pang \$1,000 for naturopathic treatments and supplements.

[135] Ms. Pang is seeking an award of \$174,690 for house cleaning services. Dr. Arseneau recommended cleaning services in his report. The defendants dispute this amount on the basis that the amount sought by Ms. Pang is based on four hours of housekeeping per week for the rest of her life, which is excessive given the size of Ms. Pang's home, her capacity to do some household tasks, and the fact that individuals will often require some assistance with cleaning as they age regardless. I agree with the defendants that the amount sought by Ms. Pang is excessive, and I award \$2,000 for cleaning services.

[136] Ms. Pang has met the onus for cost of future care in respect of acupuncture, cognitive behavioural therapy and/or psychological services, massage therapy, a chronic pain program, antidepressant and chronic pain medication and housekeeping services, for a total of \$47,200.

Special Damages

[137] Ms. Pang claims \$12,712.77 in special damages. The defendants accept \$10,965.95 of this amount, but dispute Ms. Pang's claims for ambulance services, a mattress and bed frame, and the cost of fixing her gas range.

[138] Ms. Pang submits that the mattress and bed frame were necessary because she was having sleep problems and experiencing pain getting into and out of her prior bed. She also submits that she had to fix her gas range because of an automatic shut-off she had installed due to her memory problems.

[139] I find that Ms. Pang's additional claims for the mattress, bed frame and gas range are reasonable, and I award Ms. Pang \$12,712.77 for special damages.

"Choi J."

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