
CANADA / JUDGMENT

Partridge v. Buskop

2019 BCSC 459

COURT

Supreme Court of British Columbia

DECIDED

29 March 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 459 Partridge v. Buskop

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Partridge v. Buskop,

2019 BCSC 459

Date: 20190329

Docket: M154974

Registry: Vancouver

Between:

Vallerie Carol Partridge

Plaintiff

And:

Dora Buskop

Defendant

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

Counsel for the Plaintiff:

Larry Trach

R. McQuarrie

Counsel for the Defendant:

John W. Burgoyne

Place and Dates of Trial:

Vancouver

June 11-15, 18-22, 2018

August 22, 2018

Place and Date of Judgment:

Vancouver, B.C.

March 29, 2019

I. Introduction

- [1] Mrs. Partridge claims damages for personal injuries sustained in a motor vehicle accident that occurred on October 14, 2013 ("2013 Accident"). Liability is admitted. The central issues before this Court concern the proper measure and quantum of damages for pain and suffering, past income loss, loss of earning capacity, cost of future care and special damages.

II. Factual Background and Summary of Evidence

A. Overview

- [2] Mrs. Partridge is currently 61 years old. She and her husband have been married for 43 years and have three adult children. Mrs. Partridge worked in the pathology department of Royal Columbian Hospital ("Hospital") as a medical transcriber and supervised up to 18 staff. Her work was very busy and included booking autopsies for 20 pathologists. Although she worked for different professional health authorities, she worked at the same desk at the Hospital for 27 years.
- [3] At trial, Mrs. Partridge acknowledged that she has suffered from anxiety and depression since about 2008. In 2011 and 2012, she experienced serious depression, including suicidal ideations. She also testified that she was diagnosed with post-traumatic stress syndrome ("PTSD") in 2011. She qualified for and obtained long-term disability ("LTD") benefits in 2011. The record is unclear as to when exactly she returned to work following her LTD leave but it appears that she did return at some point in 2011 or 2012.
- [4] Mrs. Partridge has been in three motor vehicle accidents. The first accident occurred in 2004 ("2004 Accident") and Mrs. Partridge suffered hip and back injuries as a result. The second accident, as noted above, occurred in 2013 and the third accident occurred in 2017 ("2017 Accident"). Mrs. Partridge testified that the 2017 Accident was minor and did not result in any injuries.

- [5] Mrs. Partridge testified that because of the 2004 Accident, she suffered "on-going problems which were never completely better." She also mentioned that she had experienced two concussions: one in 2009 due to a fall and one as a child due to a biking accident.
- [6] In 2013, but prior to the 2013 Accident, Mrs. Partridge suffered a disc problem in the lumbar spine, with sciatica-like symptoms radiating into her lower limbs. She also suffered from anemia, abscess teeth and difficulty sleeping. She recalled that, in the two years prior to the 2013 Accident, she went to about 20 physiotherapy treatments; she was also taking pain medication for her back problems as well as anti-depressant medication.
- [7] In the years prior to the 2013 Accident, Mrs. Partridge testified she experienced considerable pressures in her life, in addition to her physical and mental health issues. Her husband and daughters were ill or struggling with challenging personal issues; in addition to assisting her ailing family, she faced serious financial difficulties including the foreclosure of her family home and a bankruptcy.
- [8] It is clear that Mrs. Partridge's work situation was the source of serious emotional and physical challenges for her, prior to the 2013 Accident. She testified that her PTSD arose from continuing trauma at the workplace. She described having to transcribe documents that detailed gruesome deaths including suicides and homicides. In addition to the stress of dealing with autopsies and grieving families, she had a heavy workload all of which she says was compounded by her manager who was very critical of her performance and who Mrs. Partridge considered to be a "bully".
- [9] Mrs. Partridge's absenteeism from work due to health problems had become a serious and chronic problem prior to the 2013 Accident, going back as far as 2009. In 2009, Mrs. Partridge worked 440.5 hours out of the total of 1,350.82 hours with 163 of those hours representing holiday time. In 2010, Mrs. Partridge worked 420 hours out of a total of 1200 hours.
- [10] In direct-examination, Mrs. Partridge claimed that she missed approximately five weeks of work in 2011 but in cross-examination she admitted that she had missed much more than that. In particular, she admitted that in 2011 she only worked 420 hours out of a total of 1200 hours.
- [11] The evidence regarding Mrs. Partridge's absenteeism in 2012 was incomplete. Her counsel explained that there was no information available from January to September 2012 because Mrs. Partridge, while still employed at the Hospital in the same department, was employed by a different legal entity. Records do exist, however, for the period of October to December 2012; Mrs. Partridge's total sick time during this three-month period represented 25.32% of her working hours.
- [12] By the time of the 2013 Accident, Mrs. Partridge had exhausted her sick pay benefits. She applied for LTD following the 2013 Accident. Mrs. Partridge has not returned to her job since the 2013 Accident.

- [13] Mrs. Partridge testified that the 2013 Accident exacerbated her anxiety, depression, PTSD, as well as her pre-existing physical ailments. She also stated that the 2013 Accident caused new injuries including tinnitus. She testified that she wanted to return to work and, if the 2013 Accident had not happened, she would have returned to work the day after the Accident.

B. Mrs. Partridge's Evidence

1. The 2013 Accident and its Immediate Aftermath

- [14] At the time of the 2013 Accident, Mrs. Partridge was in the front passenger seat of a 2005 Toyota Tundra truck. Her husband, Robert Partridge, was driving the truck southbound on 248th Street in Langley. Mr. Partridge stopped at a four-way stop sign and then proceeded; as he was driving through the intersection, a vehicle traveling east went through a stop sign and t-boned their truck. Their truck came to a stop on the sidewalk, at the southeast corner of the intersection.
- [15] The ICBC repair estimate for Toyota Tundra truck was \$9,091.38 and the vehicle was declared to be a total loss. The repair estimate for the defendant's vehicle 1999 Buick LeSabre was \$6,364.12 and was also declared to be a total loss.
- [16] Mrs. Partridge testified that she heard four bangs when the car hit their vehicle. She "felt like a rag doll hitting the window and the door." Due to the impact, Mrs. Partridge struck her head on the window and suffered a contusion to the right side of her head. She was pulled out of the driver's side door because the passenger door would not open. She was placed on a gurney and taken by ambulance to the hospital. She testified that she was shaking, vomiting and crying at the hospital. She also had a bad headache and was experiencing dizziness and ringing in her ears, as well as right shoulder pain and a swollen right ankle. Mrs. Partridge was released from the Hospital that night into her family's care on a "concussion watch". There was no evidence that she sustained any fractured or broken bones.
- [17] Mrs. Partridge testified that on the evening of the 2013 Accident, she had nightmares of being in the morgue. She also recalls suffering from vertigo and knee pain.

2. Symptoms after the 2013 Accident

- [18] After the 2013 Accident, Mrs. Partridge stayed in bed for two to three days. She continued to suffer from the nausea and headaches that she experienced immediately following the accident. She felt very drowsy and confused. She continued to suffer headaches, ringing in her ears, dizziness, vertigo and sensitivity to noise. Mrs. Partridge testified that her pre-existing depression was much worse.

- [19] Mrs. Partridge testified that the 2013 Accident diminished her recreational activities: prior to the accident she walked her two large dogs daily on hiking trails; was an avid gardener; played with and held her grandchildren; cooked large family meals; crocheted and did puzzles. She testified that she now has great difficulty doing all these activities. Further, she and her husband now do much less pleasure driving.
- [20] Since the 2013 Accident, Mrs. Partridge and her husband sleep in separate rooms and experience "no intimacy." She testified that her personality has changed; she is quieter, more introverted and has "no motivation." She states that she "does not have a social life." She also states that she has lost weight because of depression and anxiety. She continues to take pain medication and anti-depressants. She makes a point of exercising daily and also does yoga daily.
- [21] Mrs. Partridge also testified that her symptoms after the 2013 Accident include:
- frequent migraines, both with and without auras;
 - tinnitus in her right ear;
 - dizziness and nausea;
 - neck and shoulder pain, radiating down the right side;
 - lower back pain on both sides, radiating to toes;
 - sleep disturbances;
 - disorganized and indecisive thinking;
 - poor concentration and focus.
- [22] She testified that following the accident:
- she is unable to drive, "before the accident drove 40 minutes to work and 40 minutes home from work";
 - she cannot sit in a room with many people and cannot cope with her grandchildren crying;
 - her personality has changed, before the accident she "was happy with my family even though I was depressed. We did things. Now I am more of an introvert. I have no patience. I am frustrated when I cook or bake. I am short tempered";
 - she lost interest in eating and has lost 35+ pounds;
 - she can no longer vacuum due to her back pain;
 - her balance is off: "I lose my balance still - especially if I go down or bend down. I can fall over".

[23] Mrs. Partridge explained that although her doctor gave her medication for mood and depression, she could not take it regularly because she could not always afford it. In particular, she testified:

I work with my doctor. He changes my medication. He gets me to therapy. I have PTSD...depression and anxiety because of work and dealing with death and dreams and nightmares. I still get nightmares of this accident. I dream I'm in a morgue. I was gone. Our group calls the passenger seat in a t-bone a death chair. We were lucky I took the truck. If we had used the car I would be dead. These dreams are of me dying. Nightmares are more frequent since the accident.

[24] In general, Mrs. Partridge described a very positive and active life, both physically and socially, before the 2013 Accident but she testified that this changed after this accident. This characterization of a somewhat idyllic life prior to the 2013 Accident does not withstand scrutiny, as addressed later in these reasons. While this Court respectfully acknowledges that Mrs. Partridge has suffered serious physical, personal and work related difficulties, it is very clear on the evidence before me that these serious difficulties existed prior to the 2013 Accident.

3. Work Engagement after the 2013 Accident

[25] Mrs. Partridge testified that being unable to work made her feel "useless." She also explained that following the 2013 Accident, a large portion of the work that she found most difficult to do (i.e., working on cases involving deaths from homicides, accidents, and crimes) was reassigned to another department in the interior of the Province. She stated that this change would have significantly reduced her job stress had she been able to return to work in October 2013.

[26] Mrs. Partridge testified that prior to the 2013 Accident, she could type 120 -150 words per minute. After the 2013 Accident, she tried to type at home but she was only able to type 30 words per minute instead of 120. She was unable to focus on the computer screen. Her neck and arms got painful and she experienced numbness. Her work included medical data entry which requires speed, accuracy and precision; however, following the accident she was slow and forgetful. Even sitting at a desk for ten minutes is difficult.

[27] Her evidence also included the following statements in regard to work:

- My job required 8 hours of sitting. I cannot do that.
- In past years, I've had lower incomes because I've taken sick leave for depression and I ran out of sick days.
- I planned to retire at 65. We have no savings. I have to work.
- Because of the accident, my work pension is compromised.

[28] Mrs. Partridge testified that she continues to experience memory loss and forgets how to spell words even though she has been spelling medical terms for years. She forgets where she put things and puts them in the wrong place. She also has to leave the room when it gets noisy, for example, when her grandchildren visit.

[29] Approximately two years after the 2013 Accident, on September 24, 2015, Mrs. Partridge acknowledged receiving a letter from Great West Life which stated in part:

On Sept. 22, 2015 your claim was assessed under the any occupation definition of disability. Your illness must prevent you from working at gainful occupation that would pay at least 70% of your current rate of pay and is reasonably available to you within British Columbia.

[30] Great West Life advised Mrs. Partridge that her claim has been accepted under the "any occupation" definition of disability. Her long-term disability benefit is payable as long as she remains totally disabled. The benefits will continue until the earliest of either recovery, death, eligibility for early retirement, or August 20, 2022, the date she turns 65.

4. Cross-examination of Mrs. Partridge

[31] On cross-examination, Mrs. Partridge was asked a number of questions regarding her pre-existing symptoms in the years and months before the 2013 Accident as well as her activity level and her absenteeism at work prior to the accident. She admitted that a number of the physical activities that she described she loved to do and no longer does, were not activities that she was doing immediately prior to the 2013 Accident. She also acknowledged that prior to the 2013 Accident, she was not as "go, go, go" as ten years earlier. She also admitted that her job had become a burden and while she denied hating her job, she acknowledged she hated "parts of her job" and that her high level of absenteeism had become a serious issue at work prior to the 2013 Accident. She also agreed that she was fed-up, worn out and that her health and mood were deteriorating in the months prior to the 2013 Accident.

[32] Mrs. Partridge admitted that since 2009, her attendance at work had become a "major problem" with her employer and that a series of meetings had taken place with her, her union and her employer prior to the 2013 Accident. She acknowledged that she was on leave in September and early October before the 2013 Accident but stated, as she did during her direct-examination, that the reason for her absence was as a result of a hand injury her husband had sustained at his work in August 2013; she testified his hand had been "degloved". She acknowledged that she had arranged to return to work, initially in September 2013, which was delayed because she needed to take care of her husband. She explained that while there was a WCB nurse coming to see him every other day, her husband still needed her at home with him most of the time.

[33] Mrs. Partridge testified that she arranged, prior to the 2013 Accident, to return to work the day after the October 2013 Accident occurred. She testified she did not return as scheduled due to the injuries sustained in the accident.

- [34] Mrs. Partridge was taken to a chart of her work attendance from January 1, 2013 through to October 11, 2013. She agreed that her "AWP" hours (which include regular hours worked, paid vacation, paid union leave and paid education leave) totalled 719.3 hours, while her total sick hours were 755.8 hours. As such, she had actually worked less than full-time between January 1st and October 11, 2013. She admitted that her anxiety and depression were a serious problem during this time.
- [35] Cross-examination of Mrs. Partridge regarding her absences from work, through the years leading up to the 2013 Accident, established that her absenteeism was pervasive and consistent, as a result of the challenging physical, emotional and personal difficulties she faced.
- [36] Counsel for the defendant cross-examined Mrs. Partridge on a series of letters she admitted receiving from her employer concerning her chronic absences from work prior to the 2013 Accident. Mrs. Partridge did not dispute their content.
- [37] In a letter dated June 15, 2009, her manager states that Mrs. Partridge had been on a leave of absence since May 4, 2009, acknowledges that Mrs. Partridge had left messages indicating she was not coming in to work due to being sick, but requests that she provide a doctor's note which specified that Mrs. Partridge was not able to work due to medical reasons. On July 13, 2009, Mrs. Partridge's manager sent another letter requesting that she contact her immediately to schedule a meeting with the manager and the union steward. The meeting took place on August 12, 2009. On August 13, 2009, Mrs. Partridge's manager sent a "letter of expectation" to Mrs. Partridge that set out a protocol for dealing with medical absences from work. On November 30, 2009, Mrs. Partridge received a letter from her employer. This letter referred to a meeting with Mrs. Partridge which took place on November 24, 2009. The letter stated that, at the November 24 meeting, Mrs. Partridge confirmed she had not successfully met the expectations set out in the "letter of expectation" dated August 13, 2009.
- [38] During cross-examination, Mrs. Partridge acknowledged she had not met her workplace expectations because of her continued absences from work due to illness. Among other things, the November 30, 2009 letter references Mrs. Partridge's high rate of absenteeism and its effect on the department, its services and her co-workers. The letter noted that Mrs. Partridge's rate of absenteeism was almost twice that of other employees. More specifically, the letter stated that between January 1, 2009 and November 18, 2009, Mrs. Partridge was absent on 17 occasions; 11 of these days were immediately following her days off (i.e., after weekends or statutory holidays) and that these figures did not include Mrs. Partridge's extended leave of absence for sickness between May 4, 2009 and August 10, 2009. The letter was respectfully worded, stating that her employer wished to ensure that Mrs. Partridge was supported in her efforts to maintain regular and consistent attendance.

[39] Another letter was sent on April 15, 2010, again stating that Mrs. Partridge was not meeting workplace expectations. The letter catalogued repeated absences from work and the fact that on ten occasions Mrs. Partridge had not called into work to advise she would not be attending. The letter catalogued a pattern of absences that was similar to that set out in the November 2009 letter. Mrs. Partridge acknowledged she received this letter and did not take issue with its contents.

[40] Mrs. Partridge explained she often did not go into work on the Monday after a weekend or the Tuesday after a long weekend. She explained those were the days that more deaths would be reported at work; she was suffering from depression, anxiety and PTSD at the time and could not cope.

[41] Mrs. Partridge was also cross-examined with regard to a "Cost of Care Planning" Report prepared by Mr. Bruce Hunt on February 2, 2017. After interviewing Mrs. Partridge, Mr. Hunt reported:

She (Mrs. Partridge) had increased days away from work during the last five years struggling with depression and anxiety, attributed to coroners and pathology medical transcript transcription content.

[42] When asked whether she agreed with the statement, Mrs. Partridge replied that not all her anxiety and depression is attributable to coroners and pathology medical transcription.

[43] Mrs. Partridge was asked about information she had provided to two doctors concerning the interpersonal difficulties she had with her supervisor at work. The first doctor was a psychiatrist, Dr. Levin, who prepared an expert report for the defendant, following an independent medical examination. In his report, Dr. Levin refers to Mrs. Partridge's comments to him that her supervisor was a bully who yelled and screamed at her. Mrs. Partridge acknowledged during her testimony that this supervisor made her job very difficult.

[44] Dr. Levin also referred in his report to the letter of Dr. Buchanan dated June 6, 2011. Mrs. Partridge was cross-examined on the content of Dr. Buchanan's letter where he stated that Mrs. Partridge informed him that in the two years, before June 2011, her supervisor raised many questions about Mrs. Partridge's competence. When asked whether her difficulties with her boss was one of reasons she hated going to work, Mrs. Partridge agreed but added that she had other reasons as well.

[45] Mrs. Partridge was also cross-examined in regard to the clinical records of her family physician, Dr. Ng. In December 2010, Dr. Ng's clinical notes referenced Mrs. Partridge's anxiety and depression. Mrs. Partridge acknowledged that she did suffer from anxiety and depression at that time.

- [46] Mrs. Partridge was specifically cross-examined about entries in Dr. Ng's records throughout 2011 which also indicated that Mrs. Partridge reported suffering from depression and anxiety, as well as stress related to her bankruptcy, other financial pressures, and the stress of working with her supervisor. Mrs. Partridge readily agreed she has suffered from depression, anxiety and financial pressures during that period. She also indicated that she and her husband have problems with creditors to this day.
- [47] In addition, Mrs. Partridge also admitted suffering from anemia for years, as well as sleep disturbances. When asked about the consequences of her anemia, she described her symptoms of fatigue, weight loss and lack of energy. On cross-examination, in light of Dr. Ng's specific clinical notes, Mrs. Partridge agreed that in March 2011 she was suffering from major depression and not sleeping well. Mrs. Partridge agreed that sleeping was difficult for her in the years leading up to the 2013 Accident because of her anxiety, depression and nightmares.
- [48] Counsel for the defendant also cross-examined Mrs. Partridge on her clinical visit with Dr. Ng on April 20, 2011 where Dr. Ng noted she was having sleep difficulties, nausea and mood swings. Mrs. Partridge acknowledged these difficulties. Mrs. Partridge testified that while she had nightmares prior to the 2013 Accident, they were worse following the 2013 Accident.
- [49] Mrs. Partridge, acknowledged that she was off work due to migraine headaches with auras in 2012. She also acknowledged she was suffering from PTSD at this time, which caused her not to want to go to work.
- [50] When challenged about her previous testimony where she stated she was very active prior to the 2013 Accident, Mrs. Partridge said that she still was tired before the accident but she could do all the things she had to do, describing the anemia as "mild." When it was pointed out that she only worked 400 out of 1200 hours in 2011 and therefore could not do all the things she once did, Mrs. Partridge conceded that this was the case by then, because of her anxiety and depression.
- [51] Mrs. Partridge agreed that in January 2013 she went to see Dr. Ng due to back pain. She was taken to Dr. Ng's clinical notes regarding his examinations of her in January, February and a CT scan in March 2013. Mrs. Partridge acknowledged she was having back problems at that time. She acknowledged that she had pain in her right sacroiliac joint. She also referred to experiencing what she described as sciatic pain which radiated down her leg and caused a numbness and tingling sensation down to her right toe. She confirmed she was experiencing these symptoms in the months before the 2013 Accident.

- [52] Mrs. Partridge also agreed that in March 2013, she went to see Dr. Ng after she strained her lower back from coughing. Dr. Ng's clinical notes in March 2013 referenced "acute myofascial pain" regarding a kink at the back of Mrs. Partridge's right shoulder and mid-back area. The notes indicate that Mrs. Partridge reported soft tissue pain at a "high level" in her back at that time. She admitted she had chronic back problems prior to the 2013 Accident.
- [53] When taken to Dr. Ng's clinical notes dated April 9, 2013 which indicate that Mrs. Partridge had backaches and that she had been off work since April 1, 2013, Mrs. Partridge confirmed she was suffering from bad back pain at this time. She requested and received an ergonomic assessment at work to assist in managing this pain.
- [54] Mrs. Partridge did not dispute her employers' records which state that she was on sick leave for all of April and May 2013, and for periods before and after these months.
- [55] Mrs. Partridge did take issue with an entry in Dr. Ng's clinical records for May 17, 2013. That entry states:

S: Saw counsellor yesterday, employer suggested LTD

.

- [56] Mrs. Partridge testified that she discussed LTD benefits with Dr. Ng in May 2013 but denied telling Dr. Ng that her employer had suggested LTD. She also denied telling Dr. Ng that she was exploring the possibility of going on LTD. As discussed further below, Dr. Ng testified that this clinical note reflected a conversation he had with Mrs. Partridge on May 17, 2013. She acknowledged that Dr. Ng was of the view that she ought to work part-time rather than not at all. She testified that he did not want her to go on LTD and not work.
- [57] Mrs. Partridge admitted that her physical and emotional condition prior to the accident in October 2013 was deteriorating and that she was emotionally overwhelmed at work. She recalled a meeting between herself and her employer's management team on July 23, 2013 regarding her continuing absenteeism. She also admitted that her absenteeism was a serious problem that was affecting her potential long-term employment; she acknowledged that this was the case less than three months before the 2013 Accident.
- [58] Mrs. Partridge acknowledged that, while she had been previously diagnosed with anxiety relating to various situations and stresses in her life, on or about August 6, 2013, she received a new diagnosis of "generalized anxiety disorder."
- [59] Counsel for the defendant suggested to Mrs. Partridge that she did not return to work on October 7, 2013 (the week before the 2013 Accident) because she did not feel well enough to do so and that this had nothing to do with her husband. Mrs. Partridge denied this was the case; she said she was starting to feel better at this point. Counsel for the defendant pointed out that Dr. Ng's notes of October 8, 2013 indicate that she reported to him that she slept through the alarm and did not return to work on October 7, 2013 as originally planned. Mrs.

Partridge again denied this was the case and stated, as she had previously in her testimony, that she did not return to work at that point because her husband had suffered a serious injury to his hand and she needed to take care of him. She also noted her daughter had health complications at that time and needed her attention as well.

- [60] Mrs. Partridge acknowledged the accuracy of a form that stated her qualifying period for LTD benefits began on September 23, 2013, before the 2013 Accident, but explained that this form was filled out by a payroll clerk after the 2013 Accident. She acknowledged the last date she would have worked was September 20, 2013 and, accordingly, the qualifying period for LTD began on the following Monday. She acknowledged that she was off work immediately prior to the 2013 Accident and that employment records indicate that she was on unpaid sick leave from September 23, 2013 to October 11, 2013.
- [61] Counsel for the defendant also cross-examined Mrs. Partridge on a document that recorded a telephone conversation she had with a representative of her LTD insurer in April 2014. She recalled the conversation. This record stated that Mrs. Partridge had contemplated going on LTD multiple times in previous years. When asked about whether this statement was accurate, Mrs. Partridge softened her stance on this issue somewhat; she testified: "well, maybe I did, again my memory is short term. I forget things and that is one of the things I might have forgotten. I might have thought about it but I didn't want to do it".
- [62] Mrs. Partridge was taken to a calendar, collated by her employer, which catalogued her paid and unpaid sick time, as well as her vacation time for 2013. She agreed that in 2013, prior to the 2013 Accident, she was away from work more than she was actually at work. She acknowledged that this was due to her depression and anxiety. She agreed that leading up to September 2013 her condition was deteriorating; she acknowledged she was emotional at work and cried regularly. She agreed she was overwhelmed and could not do her supervisory job properly.

C. Lay Witnesses:

1. Amy Lu

- [63] Amy Lu testified that she worked for the BC Clinical and Support Services Society, which provides financial services to the provincial health and other authorities such as the Hospital. She confirmed that Mrs. Partridge was still considered an employee of the Hospital and that she was on a leave of absence without pay.
- [64] Mrs. Partridge's hourly rate at the time of the 2013 Accident was \$23.08 and she paid all of the premiums for her benefits (MSP, dental, extended health) from January 1, 2014 to March 1, 2014. On March 1, 2014, Mrs. Partridge and her employer started sharing the cost of paying the premiums for benefits on a 50/50 basis.

2. Donna Zoretich

- [65] Donna Zoretich also testified. She works as manager of the payroll and benefits department at the BC Clinical and Support Services Society. Ms. Zoretich confirmed that her organization is seeking to recover \$11,900.00 for the cost of premium benefit payments made on Mrs. Partridge's behalf since October 14, 2013 while she was off work.
3. Ashley Partridge
- [66] Mrs. Partridge's daughter, Ashley Partridge ("Ashley"), testified. She and her spouse, Richard Menning, have lived with Mrs. Partridge and her husband for over sixteen years. They have three young children: Iyla was born in September 2013; Jaydin was born December 2015; and Emily was born in January 2018.
- [67] Ashley described how her mother was the main caregiver of the family. She described how "Mom helped us out a lot with cooking, cleaning and laundry." She described how her father had a hand injury and was on a "pick-line" after developing a staff infection following a workplace accident. She recalled that the pick-line was removed "just before" the 2013 Accident.
- [68] Ashley described how "a lot changed after the accident" in 2013 and how she became the full-time caregiver for both her parents, as well as her newborn baby. Ashley is now a stay-at-home mom. She recalled that after the 2013 Accident she took care of her mother, father and her newborn, Iyla, while also being responsible for taking care of the family dogs, one of whom was very sick.
- [69] Ashley described how their large extended family used to eat together on a weekly or biweekly basis and how Mrs. Partridge used to do most of the cooking. After the 2013 Accident, family dinners occurred once every couple of months. Ashley would "organize things and my sister would help."
- [70] With regard to her children, Ashley testified that "[o]nce Jayden was born - it was a lot for my mom to handle - she couldn't do it - she couldn't babysit - after Emily was born - we can only see them for small spurts - the noise of the kids is too much".
- [71] Ashley also testified how her mother's personality changed "a lot" after the 2013 Accident. She described how, before the 2013 Accident, her mother was "very happy" even though her "line of work" was "very stressful." She testified that after the 2013 Accident her mother's moods changed quickly, "like a light switch turning on and off" and "instantly she would be upset, or angry or irritable . slightest thing would set her off".
- [72] Ashley acknowledged that she did as much she could prior to the accident to help her mother around the house but noted it was a large 4000 square-foot house with a big yard. Her mother lived upstairs and tended to her portion of the house and we lived downstairs, tending to our portion. Ashley testified that since the 2013 Accident she does the housework and asks her sisters to help because her mother has difficulty bending over. She testified, "Mom can wipe counters but can't bend."

- [73] Ashley also testified that her mother has trouble picking up and holding her children; she recalled her mother also has difficulty with her balance and can get "off balance" easily if she bends over.
- [74] Ashley recalls that as a teenager her mother would work during the day at the Hospital and then work at night on her own stenography business. She recalls her mother working long hours.
- [75] On cross-examination, Ashley stated that she and her mother are very close. Ashley testified that she did not recall that her mother had physical or emotional problems prior to the 2013 Accident. She did not recall her mother being depressed or having back problems prior to the 2013 Accident, even though her mother was home and absent from work for a considerable period of time prior to the accident. Ashley testified she did not recall her mother taking days off work due to illness during this time period. She said her mother kept her personal problems to herself.
- [76] Ashley worked until the end of May 2013 and then went on medical leave prior to her own daughter's birth in September 2013. She stated that even though she was home with her mother in June through September of 2013, her mother kept her medical condition to herself. Ashley eventually softened her stance and stated that she did recall that her mother took some time off work, stated she did not know why her mom was off work, although she noted that work was stressful for her mother. Ashley recalled that her father injured his hand at work around August and September 2013 and that his hand became seriously infected. She stated she knew her mother took time off at that time to take care of her father.

4. Richard Menning

- [77] Mr. Menning is Mrs. Partridge's son-in-law and Ashley Partridge's spouse. He confirmed that he, his wife and three children live in the basement suite of Mrs. Partridge's home.
- [78] Mr. Menning's testimony was similar to that of his wife in many respects. He testified that before the 2013 Accident, their family "was happy-go-lucky" with lots of family events and "huge" family dinners, "almost weekly." He stated that Mrs. Partridge would do "fantastic dinners before the accident enough to feed an army." Mr. Menning testified that "we can't afford them now .don't have them anymore before the accident we had them almost weekly."
- [79] Mr. Menning testified that there was a "100%" change after the 2013 Accident." He described how before the accident, Mrs. Partridge would work at the Hospital during the day and then work three hours at night in the garden. She did a great deal of gardening, weeding, harvesting and planting. He testified that she can no longer garden and needs help taking out the garbage, cleaning and vacuuming. He stated that his wife, Ashley, "does most of the cooking for all of us."
- [80] Like his wife, Mr. Menning testified that he was not aware that Mrs. Partridge ever had physical or emotional problems before the 2013 Accident.

5. Carrie Partridge

- [81] Carrie Partridge ("Carrie"), Mrs. Partridge's 28 year-old daughter, also testified and her testimony was similar to that of her sister and brother-in-law. Carrie is also very close to her mother; she and her boyfriend lived with Mrs. Partridge and her husband until about four or five months prior to the 2013 Accident. After she moved out, Carrie testified that she still saw her mother almost everyday because she lived close-by in Aldergrove. This changed approximately two years ago when she and her husband moved to Sardis, which is about a 1.5 hours drive from Mrs. Partridge's home.
- [82] Carrie testified that before the 2013 Accident, her family would get together for large family dinners almost every weekend and that Mrs. Partridge would plan and prepare. She said that currently her sister Ashley has "taken over these dinners" and that she helps out because her mother is no longer capable of planning or cooking the dinners.
- [83] Carrie also testified that her mother "used to be the life of the room" but since the 2013 Accident she would leave the room "if it got too noisy." Carrie also stated that before the 2013 Accident, she would go for long walks and hikes with her mother and the family dogs. After the accident, her mother "would last only 20 minutes" before "having to turn around and go home." Her stamina is much lower now.
- [84] As regards to her mother's physical condition, anxiety or depression, Carrie testified she was aware of no such difficulties prior to the 2013 Accident. She stated that her mother would not discuss her emotional state or finances with her. She stated that, because she is no longer living with her mother and is very busy with her own career, she has a limited understanding of her mother's current emotional state.

6. Zachary Mackay

- [85] Zachary Mackay is Carrie's husband. He also testified about the Partridge family's rich family life prior to the 2013 Accident, how Mrs. Partridge used to cook big family dinners and how Mrs. Partridge's personality changed after the accident.
- [86] He testified about how Mrs. Partridge "doesn't come for walks", "gets headaches" and "is pretty reclusive" and she has "definitely changed." He noted that she is "a lot more stressed out" and "will go to her room and start crying."
- [87] Mr. Mackay acknowledged that part of the reason the family dinners are not as frequent as they used to be is that he and his wife are busy working full time and that it "depends on our schedule."

D. Expert witnesses tendered by Plaintiff

1. Dr. Ng

- [88] Dr. Kenneth Ng is a family physician with a general practice. He has been treating Mrs. Partridge since 1995. He was qualified as an expert in family medicine.

- [89] In a letter dated August 2, 2014 letter, Dr. Ng states that Mrs. Partridge "sustained a soft tissue strain to her neck, upper and lower back and sequelae consistent with a closed head injury."
- [90] In his December 16, 2015 report, Dr. Ng reviewed his clinical notes, observations and assessments relating to his treatment of Mrs. Partridge in the years following the 2013 Accident. His observations and assessments, as set out in his report, are summarized below.
- [91] Dr. Ng confirmed that on October 18, 2013 Mrs. Partridge attended his offices and stated she was suffering from neck pain, shoulder pain, a headache, lower back and right knee soreness. When he examined Mrs. Partridge on December 13, 2013, Dr. Ng reported that she was still having difficulties in using her right arm and that she "voiced difficulties with transcribing at her work if she returned there." Dr. Ng also stated that Mrs. Partridge's "closed head injury was still causing her difficulty in multitasking" and she reported that her mood disorder had regressed since the 2013 Accident.
- [92] Dr. Ng confirmed that Mrs. Partridge has had a "long history of depression" and was started on Cipralext at 10 mg daily in February 2009. This amount of medication was doubled to 20 mg daily on April 18, 2013.
- [93] Dr. Ng confirmed that Mrs. Partridge "also has a history of mechanical lower back pain flares and that a previous lumbar CT scan on February 18, 2013 revealed "mild broad-based bulges at the L2-3 and L3-4 levels causing mild spinal stenosis." Dr. Ng reported that at his March 11, 2014, Mrs. Partridge confirmed that she was finishing the ICBC funded physiotherapy treatments and she was still having aches in her right neck, her shoulder and down her right arm, as well as pain in her left back and right sacroiliac joint area.
- [94] Dr. Ng stated in his report that "on March 26, 2014 Mrs. Partridge had been assessed at active physiotherapy and was awaiting ICBC approval." In April, May and June of 2014, Mrs. Partridge started active physiotherapy and had "continued with passive physiotherapy with gradual improvement, though she was still experiencing low back spasms and headaches every two days." Dr. Ng states in his report that Mrs. Partridge's "mood disorder had not improved and Wellbutrin XL 150 mg was added to her Cipralext."
- [95] Dr. Ng reported that when he saw Mrs. Partridge on July 29, 2014, "she was having active physiotherapy two times a week, daily one-hour exercises walking and 20 minutes of gardening. She felt that she was improving her core strength but she still had mid-back spasm with key boarding." He reported that, at this time, Mrs. Partridge was complaining of "forgetting her spelling while transcribing a neurological report and she still experiencing headaches every two weeks with ringing in her ears."

- [96] Dr. Ng examined Mrs. Partridge regularly in the weeks and months that followed. He reported that she saw Dr. Kaushansky, a registered psychologist and clinical neuropsychologist, on September 11, 2014, and that Dr. Kaushansky diagnosed Mrs. Partridge with "a severe degree of depression and a possible labyrinthine dysfunction" (labyrinthine dysfunction relates to an inner ear disorder involving ringing in the ears and dizziness).
- [97] Dr. Ng examined Mrs. Partridge on January 28, 2015. She reported having nightmares 4-5 times a week, with flashbacks of the 2013 Accident that involved children.
- [98] Dr. Ng reported that when he saw Mrs. Partridge on March 5, 2015, she exhibited "tenderness on palpation of her fibromyalgic points." She informed Dr. Ng that she had to cancel a work meeting arranged by LifeMark due to her increased anxiety, sweating and diarrhea. On April 14, 2015, Mrs. Partridge advised Dr. Ng that she had been doing home exercises and direction of LifeMark. She also reported that she was still experiencing myofascial pain, PTSD symptoms and vertigo. She was continuing with her medications for her anxiety and depression.
- [99] On May 14, 2015, Dr. Ng reported that Mrs. Partridge was experiencing a flare-up in her myofascial pain after two exercise sessions at LifeMark. Dr. Ng continued to treat Mrs. Partridge throughout the course of that summer. On July 17, 2015 he noted that she continued to experience aches and pains and that her mood had worsened. He discovered that she had not taken her anti-depressants for two weeks due to a lack of finances and opined that he was of the view that Mrs. Partridge's pain flare-ups related to withdrawal symptoms from her psychiatric medications. He decided to change her psychiatric medications.
- [100] Dr. Ng examined Mrs. Partridge in October and November 2015. At that point she was continuing to complain about anxiety, nightmares and sleep disturbances.
- [101] On cross-examination, Dr. Ng acknowledged that Mrs. Partridge did not suffer from loss of consciousness at the time of the 2013 Accident. He also agreed that when a brain injury is claimed, it is best to have an opinion from a neuropsychologist. He agreed that Dr. Kaushansky, who was a psychologist and neuropsychologist, had examined Mrs. Partridge and concluded in September of 2014 that a neuropsychological assessment was not warranted.
- [102] In regard to the period before the 2013 Accident, Dr. Ng agreed on cross-examination that, in the spring of 2013, Mrs. Partridge's depression was not improving and was getting worse. As noted above, on April 18, 2013, Dr. Ng found it necessary to double Mrs. Partridge's dosage of anti-depressant medication.

- [103] Dr. Ng was also cross-examined on the reference in his May 17, 2013 clinical notes to the effect that Mrs. Partridge's employer had raised the possibility that she go on LTD. Dr. Ng testified that Mrs. Partridge had said her employer had raised the possibility of Mrs. Partridge going on LTD but he did not recall that Mrs. Partridge herself wanted to go on LTD at that time. Dr. Ng testified that he advised Mrs. Partridge not to go on LTD. He was of the view that it was best for her to continue to work part-time.
- [104] Dr. Ng acknowledged that this clinical notes of October 2, 2013, in the days prior to the 2013 Accident indicate "anxiety ++" which means that her anxiety was increasing at that time. He acknowledged that Mrs. Partridge was scheduled to return to work the week before the 2013 Accident but did not. During the course of cross-examination, Dr. Ng acknowledged that Mrs. Partridge's barriers in returning to work were psychological and that she was continuing to suffer from PTSD.
- [105] Dr. Ng explained that PTSD is a disorder where the patient feels threatened, or that their life is in danger; symptoms can include flashbacks, nightmares and adrenalin bursts. Returning to an environment that caused PTSD could trigger or aggravate the symptoms. Dr. Ng stated that, hopefully, with medication and counselling, a person with PTSD can cope and return to work.
- [106] Dr. Ng stated in his December 16, 2015 report that, if the 2013 Accident "had not occurred, [Mrs. Partridge] would still likely be able to work at the same pace as prior to the MVA." However, Dr. Ng acknowledged on cross-examination, that he was not aware of the pace Mrs. Partridge was actually working prior to the 2013 Accident. That is, he was not aware of the severity of her absenteeism. When counsel for the defendant put it to Dr. Ng that Mrs. Partridge's attendance at work had been decreasing and that, in the 9.5 months prior to the 2013 Accident, her attendance was less than 50%, he conceded he was not aware of this pattern. In fact, Dr. Ng significantly under-estimated the amount of time Mrs. Partridge was away on sick leave prior to the 2013 Accident; he acknowledges he was of the view that she was on sick leave 25% of the time.
- [107] When asked about whether Mrs. Partridge's attendance at work would have continued to decrease even without the car accident, Dr. Ng responded he did not think so. He stated he thought Mrs. Partridge's attendance at work "would probably level out at about 50%" if the accident had not occurred.

2. Dr. Reebye

- [108] Dr. Rajeev Reebye, a physiatrist, was tendered as an expert witness by Mrs. Partridge. He was qualified as specialist in physical medicine and rehabilitation. He conducted an examination of Mrs. Partridge on November 2, 2016.
- [109] Dr. Reebye opined that Mrs. Partridge sustained soft tissue injuries to her upper neck, upper shoulder, rib cage region and low back region as a result of the 2013 Accident. He testified that as a result of the soft tissue injuries, she developed myofascial pain symptoms

(pain to the muscles and the covering of the muscles to the upper neck, mid-back, low back and rib cage muscle regions). Dr. Reebye also opined that Mrs. Partridge suffered from a mild traumatic brain injury in the 2013 Accident. He stated that Mrs. Partridge is in a chronic pain cycle (chronic pain being defined as pain persisting more than three months in duration).

- [110] Dr. Reebye was cross-examined on his report wherein he stated that Mrs. Partridge reported during the independent medical examination that "she was pain-free prior to the 2013 Accident." He was also cross-examined on the conclusion in his report that: "I am of the opinion Mrs. Partridge was well with regards to no pain patterns prior to the injury of October 14, 2013."
- [111] Dr. Reebye acknowledged on cross-examination that he was not aware of the amount of sick leave Mrs. Partridge had taken prior to the 2013 Accident and her level of absenteeism. Although he agreed that she suffered chronic pain and significant psychological issues before the 2013 Accident, he explained his opinion that Mrs. Partridge was "pain-free" was limited to the one-month period immediately prior to the 2013 Accident. Nevertheless, he agreed that before the 2013 Accident, Mrs. Partridge's psychological issues affected her ability to return to work. Dr. Reebye also agreed on cross-examination, in light of Dr. Ng's clinical notes, that while he was told by Mrs. Partridge that she was pain-free prior to the 2013 Accident, Dr. Ng's clinical records indicate otherwise.
- [112] However, Dr. Reebye stated that in his view, Dr. Ng's clinical records did not indicate that Mrs. Partridge suffered from sciatic nerve pain prior to the 2013 Accident. He acknowledged that the records indicated she suffered from "mild stenosis" prior to this accident, which involved a narrowing of the diameter of the spinal canal.
- [113] Dr. Reebye stated that Mrs. Partridge's most relevant problem prior to the 2013 accident was her anxiety and that her depression was "well controlled." However, he acknowledged he was not qualified as a psychiatrist or psychologist. Indeed, he agreed that, with regard to the impact of Mrs. Partridge's PTSD, depression and anxiety, he would defer to the opinion of a psychiatrist.
- [114] Dr. Reebye admitted to reviewing and considering the 2015 LifeMark Functional Capacity Report which concluded that the Mrs. Partridge was able to do her job. Dr. Reebye testified that some of his patients had received good therapy at LifeMark but asserted their functional capacity reports did not take into account the patient's pre-accident functional capacity. On re-direct, Dr. Reebye said that the LifeMark functional capacity report did not consider that Mrs. Partridge had been diagnosed with labyrinthine concussion which was a physical injury to the inner ear. He opined this was a mistake.

- [115] During his direct-examination, Dr. Reebye also testified Mrs. Partridge had sustained a concussion or "mild traumatic brain injury" as a result of the 2013 Accident. He testified that Mrs. Partridge had an accident in 2009, which caused a concussion leaving her more vulnerable to further concussions.
- [116] When cross-examined, Dr. Reebye acknowledged that Mrs. Partridge was not referred at the time of the 2013 Accident to triage for concussion treatment. However, he stated that many people with concussions are not diagnosed properly at the hospital and are sent home without proper treatment.
- [117] Dr. Reebye admitted under cross-examination that the Mrs. Partridge's Glasgow Coma score was 15 at the scene of the accident, which is an indication that there was no brain injury. However, in concluding Mrs. Partridge suffered a concussion, he stated the key factors were that Mrs. Partridge had hit her head on the passenger-side window and that she felt "jumbled up" or confused after the collision, along with having headaches, difficulty with short-term memory and balance issues.
- [118] At points during his cross-examination, Dr. Reebye did not answer the questions put to him directly. Ultimately, he agreed Mrs. Partridge was suffering from chronic pain prior to the 2013 Accident. Furthermore, while he stated in his report that Mrs. Partridge "developed low mood and anxiety symptoms" as a result of the 2013 Accident, he agreed she also had these symptoms before this accident.
- [119] Dr. Reebye also agreed on cross-examination that a more recent examination or assessment of either Mrs. Partridge's physical or psychiatric issues would provide a more accurate assessment of her current function.

3. Dr. Longridge

- [120] Mrs. Partridge tendered Dr. Neil Longridge as an expert. He is an expert in otolaryngology, having practiced in the area for 40 years. He has published many papers on dizziness and tinnitus.
- [121] Dr. Longridge conducted an independent medical examination of Mrs. Partridge on January 16, 2016. He diagnosed her with dizziness, tinnitus and sensitivity to sound, likely resulting from the 2013 Accident.
- [122] On cross-examination, Dr. Longridge acknowledged that there was no method of measuring tinnitus objectively and that diagnosis and treatment rely on the patient's self-reports. He acknowledged that many people suffer with tinnitus and live normal and productive lives, although he noted that three of his patients over the course of 40 years had committed suicide. He also agreed that side-effects from medications do effect assessment and diagnosis but he was advised by Mrs. Partridge that she was not taking any medications.

- [123] He noted that Mrs. Partridge advised that she never had tinnitus prior to the 2013 Accident but suffered from dizziness prior to this incident. She reported falling off a bike when she was ten years old and then again in 2009 when she tripped and fell, hitting her left temple. Mrs. Partridge received post-concussion therapy as a result of falling in 2009.
- [124] Dr. Longridge did not have a complete profile of Mrs. Partridge's medical history at the time of his examination and diagnosis. For example, he was not aware of Mrs. Partridge's pre-existing anxiety and sleeplessness prior to the 2013 Accident. Furthermore, he was also under the impression that she was not taking any medications prior to the 2013 Accident and that she was not taking any medications at the time of his assessment.
- [125] On cross-examination, Dr. Longridge acknowledged that medications can impact his diagnosis as their possible side effects may confound his assessment. He stated that, at the time of the examination, Mrs. Partridge reported falling about once a week.
- [126] Based on his examination, Dr. Longridge opined Mrs. Partridge suffers from tinnitus and that "it is not intrusive and does not handicap her." He stated that "as the tinnitus is disturbing her sleep it should be regarded as of moderate severity." Dr. Longridge did not expect that Mrs. Partridge's tinnitus would resolve itself given that most patients who improve do so within two years. He testified that treatments were available with good success rates, testifying that masking therapy "has some benefit and recommended that Mrs. Partridge be evaluated with respect to tinnitus retraining therapy "to see if this would be of assistance to her."
- [127] Dr. Longridge concluded that the "onset of tinnitus subsequent to the accident and its absence prior to the accident in the absence of other satisfactory explanation means, in my opinion, that the accident is the probable cause." He also concluded that that Mrs. Partridge suffered a labyrinthine concussion at the time of the 2013 Accident related to the tinnitus. He also stated, "by her description she may have Benign Paroxysmal Positional Vertigo" (a condition that involves acute dizziness).
- [128] Notably, Dr. Longridge specifically cautioned, "review of this patient's history demonstrates previous episodes of head trauma with dizziness, so caution must be exercised in interpreting this measured objective finding in relation to whether it was induced by the present accident." He also states:

However, her ongoing dizziness, which are characteristic of post-traumatic vestibular disease would certainly fit with the measured findings. It is possible that the measured abnormalities are due to previous injuries which means that her balance system was damaged and is vulnerable to injuries which would not have caused the symptoms she has. Her description of the accident indicates that a significant blow happened so that the accident certainly has the capacity to have caused the measured findings.

[129] On cross-examination, Dr. Longridge stated that his recommended treatment has been found to be very effective in assisting people with inner ear balance problems. He acknowledged on cross-examination that there is an approximate 67% success rate with this form of therapy. However, while symptoms are improved through therapy, the therapy is not a cure.

[130] Dr. Longridge acknowledged that he had not seen Mrs. Partridge in the about 2.5 years prior to trial and that an updated medical assessment would have been of value.

4. Mr. Hunt

[131] Mr. Bruce Hunt testified on behalf of Mrs. Partridge. He was qualified as an occupational health consultant in the areas of life care planning, work capacity evaluation and fitness for work. He gave specific evidence on the cost of future care, which is addressed latter in these Reasons.

[132] In the course of his report, Mr. Hunt reviewed various LifeMark reports relating to assessments of Mrs. Partridge, her work capacity and her work conditioning. Mr. Hunt stated in his report that Mrs. Partridge was found by LifeMark not to meet the essential prerequisites of her employment demands. During his cross-examination, Mr. Hunt was taken to the 2015 LifeMark Functional Capacity Report. He acknowledged that in September 2015, the discharge report from LifeMark stated that a functional capacity assessment was conducted and Mrs. Partridge was found to have met all the essential physical requirements of her pre-accident position as a Supervisor/ Medical Transcriber. Accordingly, Mr. Hunt corrected his evidence; he agreed that Mrs. Partridge had been found to be able to meet the requirements of her position.

[133] In his report, Mr. Hunt references Mrs. Partridge's history of mental illness including depression, anxiety, confusion, poor memory, headaches and sleep disturbances. He was not aware that a psychiatrist (Dr. Levin) and orthopaedic/musculoskeletal specialist (Dr. Gallimore) had assessed Mrs. Partridge prior to trial; he had not seen these more recent assessments.

E. Experts Witnesses tendered by the Defendant

1. Dr. Gallimore

[134] Dr. Gallimore was tendered and qualified as an expert in orthopaedic surgery. He examined Mrs. Partridge on March 9, 2018. He opined that Mrs. Partridge suffered "strain-type injuries to her areas of concern" as a result of the 2013 Accident. That is, she suffered soft tissue type injuries involving cervical strain to her right upper arm and lumbar areas. He further opined that the "the strain injuries" following the 2013 Accident "would have a period of exacerbation which would have been temporary." He concluded that "there is no evidence of any radiculopathy or nerve root tension signs in the bilateral upper or lower extremities" and that:

Currently, Mrs. Partridge is approximately more than four years post-motor vehicle accident. I would provide for approximately 4 to 6 months resolution of any strain injuries as a result of the subject motor vehicle accident.

[135] Dr. Gallimore further opined that:

[T]here is no evidence for any orthopaedic or muscular skeletal injury which from would prevent Ms. Partridge from engaging in any activity either vocationally or avocationally her assessment today did not provide for any objective findings which would preclude her from engaging in her regular activities.

[136] Dr. Gallimore acknowledged Mrs. Partridge history of mental health issues and deferred to specialists in that field.

2. Dr. Levin

[137] The defendant called Dr. Alexander Levin, who was qualified as a psychiatrist. Dr. Levin examined Mrs. Partridge on January 23, 2018, in regard to "psychological/emotional disturbances, complaints of cognitive difficulties and experiences of pain as well as her differential psychiatric diagnosis and its relevance to the motor vehicle accident of October 14, 2013." Dr. Levin notes that Mrs. Partridge's medical file revealed a long-lasting, pre-existing history of depression and anxiety, including her pre-existing psychiatric diagnosis of generalized anxiety disorder and post-traumatic stress disorder symptomology related to her work related stressors. In this regard he opined:

In clinical practice, the above-described psychiatric disorders usually have a lifelong fluctuating clinical course with transient periods of worsening of symptoms. In other words it is most likely that even in the absence of the subject MVA, Mrs. Partridge would continue to experience periods of exacerbation of her depression and anxiety.

[138] Dr. Levin explains that because of her childhood experiences, Mrs. Partridge developed a personality style characterized by chronic experience of depression and anxiety. He concludes that in his clinical opinion, Mrs. Partridge's lifelong history of depression, anxiety and related coping strategies would suggest the presence of an underlying avoidant personality structure.

[139] Dr. Levin also addressed Mrs. Partridge's history of anxiety, noting that her generalized anxiety disorder includes symptoms of autonomic hyperactivity including shortness of breath, dizziness, palpitations, and sweating. He concluded that in his clinical opinion, "it is most likely that even in the absence of the subject MVA, she would continue to experience symptoms of chronic anxiety and related physical problems."

[140] In regard to the mild concussion which Mrs. Partridge reported she experienced in 2009, Dr. Levin opines:

It is important to emphasize that Ms. Partridge's previous concussion in 2009 resolved without any long-term consequences. Indeed, in clinical practice a mild traumatic brain injury, also referred to as a concussion, usually does not result in any long-term cognitive, emotional or psychological consequences. In the absence of any residual cognitive deficits following Ms. Partridge's previous possible concussion in 2009, she did not present with any neuropsychiatric symptoms that could accumulate or predispose her to more severe consequences of her head injury sustained in the subject MVA. In other words, Ms. Partridge's reported concussion in 2009 has no clinical implications for her current neuropsychiatric diagnosis in the context of her reported head injury sustained in the subject MVA.

- [141] Dr. Levin more specifically concluded that in his clinical opinion, Mrs. Partridge did not develop any clinically significant psychiatric condition that would require her to take time off work or warrant psychiatric treatment different from before the 2013 Accident. He concluded that Mrs. Partridge's psychological emotional and behavioural response to the 2013 Accident did not exceed a normal reaction to such an event and did not constitute an emotional trauma that caused her a post-traumatic stress disorder or a worsening of her pre-existing anxiety or PTSD symptoms. Further, given Mrs. Partridge's pre-existing history of significant absenteeism from her workplace and unresolved work related stressors it is most likely that, even in the absence of the 2013 Accident, Mrs. Partridge would continue to experience difficulties attending her work regularly. In this regard, he explains that it is "most likely that Ms. Partridge's underlying avoidant personality style and related coping strategies resulted in Mrs. Partridge's absenteeism."
- [142] Dr. Levin also concluded that from a neuropsychiatric perspective, Mrs. Partridge did not present with any reported periods of loss of consciousness, confusion, disorientation, retrograde or anterograde amnesia to suggest the presence of or mild traumatic brain injury as a result of the 2013 Accident. He deferred to the opinion of other specialists in internal medicine regarding Mrs. Partridge's physical injuries.
- [143] Dr. Levin also considered the significance of the nightmares, which Mrs. Partridge reported experiencing following the 2013 Accident. When asked to describe her nightmares, Mrs. Partridge reported to Dr. Levin that during the accident, she did not see the other vehicle approaching, nor did she experience fear, or anticipatory anxiety of pending injury. She explained to Dr. Levin that she "did not see the accident But the car came at us and I remembered after the accident and the bang bang Didn't have time to react or have fear I was thinking I could have been dead."
- [144] When asked to clarify her nightmares following the 2013 Accident, Mrs. Partridge stated: "in my nightmares, I was in a morgue. I was dead".
- [145] Dr. Levin was of the view that Mrs. Partridge's PTSD arose from her work environment; he referenced instances in which Mrs. Partridge reported to him that she would vomit before attempting to return to work and spent days in bed rather than going to her job. He explained her PTSD symptoms in the context of her exposure to horrifying homicides and

other disturbing content, in the materials that she was required to transcribe at the office, over years of service. He was not of the view that the 2013 Accident exacerbated her PTSD symptoms.

- [146] Counsel for Mrs. Partridge argues that I should not give Dr. Levin's opinion any weight; he refers to other cases where Dr. Levin's opinion evidence was rejected and found not to be neutral. He argues that in this case, Dr. Levin has crossed the threshold of "neutral expert" and become an "advocate". He also argues that Dr. Levin failed to consider the expert report of Dr. Longridge and that this was a glaring omission. Counsel for the defendant argues that Dr. Levin has been qualified as an expert witness in over 70 civil cases and, further, the cases to which the plaintiff refers are distinguishable on their facts and inapplicable.
- [147] I have carefully considered counsels' arguments and have concluded that there is no principled basis that justifies dismissing Dr. Levin's evidence in its entirety. Each case must be decided on its own particular facts. In this case, I found Dr. Levin's opinions were based on clearly articulated explanations and rationales, based on an almost four-hour examination of Mrs. Partridge, as well as his review of various clinical records and other materials which were provided to him to examine. In my view, he did his job as a neutral expert and not as an advocate. As will become apparent later in my Reasons, I have not accepted Dr. Levin's evidence in its entirety, in light to the totality of the evidence before me. Nonetheless, I am unable to conclude that I ought to dismiss his evidence altogether.

III. Injuries sustained in the 2013 Accident

- [148] In *Clements v. Clements*, 2012 SCC 32 at para. 8, the Supreme Court of Canada explained the "but for" test for causation as follows:
- [8] The test for showing causation is the "but for" test. The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. Inherent in the phrase "but for" is the requirement that the defendant's negligence was necessary to bring about the injury - in other words that the injury would not have occurred without the defendant's negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.
- [149] It is noteworthy that the defendant's negligence need not be the sole cause of the injury so long as it is part of the cause beyond the de minimus range. Causation must be applied in a common sense fashion and need not be determined by scientific precision: *Athey v. Leonati* [1996] 3 S.C.R. 458 at paras. 13-17; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

- [150] In light of the above authorities, I find that the 2013 Accident caused soft tissue injuries to Mrs. Partridge's neck, right shoulder, mid-back, and low back regions, which exacerbated previous injuries to her back. Similarly, I find that Mrs. Partridge's pre-existing depression and anxiety, as well as her PTSD-like symptoms (as she described them), and her incidents of dizziness and migraine headaches, were also exacerbated by the 2013 Accident for a period of time. As such, she is entitled to be compensated for this pain and suffering.
- [151] I also find that Mrs. Partridge sustained a labyrinthine concussion as a result of banging the side of her head against the passenger window during the 2013 Accident. Further, I find that she developed tinnitus as a result of this accident. Accordingly, she is entitled to be compensated for each of these. However, I am not persuaded, on a balance of probabilities in light of the evidence before me, that Mrs. Partridge suffered benign paroxysmal positional vertigo because of the 2013 Accident.
- [152] Dr. Longridge opined Mrs. Partridge "may" have suffered paroxysmal positional vertigo (acute dizziness) from the 2013 Accident but he did not conclude she likely did. He also expressly cautioned about the effect of pre-existing head injuries with dizziness, as complicating the causal connection between the 2013 Accident and her current symptoms. He also concluded the Mrs. Partridge's tinnitus was not disabling.
- [153] I am also not persuaded on a balance of probabilities that Mrs. Partridge suffered a mild traumatic brain injury from the 2013 Accident, as distinct from and in addition to a labyrinthine concussion. Dr. Levin and Dr. Reebye tendered opposing opinions on the question of whether Mrs. Partridge suffered a mild traumatic brain injury. Furthermore, I have found that many of the symptoms Mrs. Partridge testified she experienced after the 2013 Accident, indicative her counsel asserts of a brain injury, were also present prior to the accident. Moreover, while Dr. Reebye is no doubt a respectable expert, the reliability of his expert evidence in this case is attenuated in some respects by his incomplete understanding of Mrs. Partridge's situation in the months prior to the 2013 Accident. I found Dr. Levin's opinion more reliable and compelling on the issue of whether Mrs. Partridge suffered a mild traumatic brain injury.
- [154] Counsel for the defendant refers to the "crumbling skull" rule, which simply recognizes that the defendant need not put the plaintiff in a position that is better than his or her original position: *Athey* at para. 35. Accordingly, while Mrs. Partridge must be compensated for the exacerbation of her pre-existing physical and psychological conditions, the defendant need not compensate her for any debilitating effects that Mrs. Partridge would have experienced regardless of the accident. In this case, the defendant is liable for the additional damage caused or contributed to by the 2013 Accident, but not the pre-existing damage. If there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award: *Athey* at para. 35. *Graham v. Rourke* (1990), 75 O.R. (2d) 622.

[155] The difficult issue in this case is determining the extent to which Mrs. Partridge would have experienced a deterioration in her condition due to pre-existing conditions, absent the accident. This assessment is particularly challenging in light of the incompatible and inconsistent testimonies of both the expert and lay witnesses. For example, the evidence of Mrs. Partridge in her direct-examination suggests she lived an active and healthy life prior to the 2013 Accident. The evidence of her family also suggests this was the case. However, there is a significant and compelling body of evidence that indicates otherwise. This evidence, as outlined above, includes but is not limited to:

- 1) Mrs. Partridge's significant admissions during her cross-examination that she suffered from a number of serious health issues in both the years and months just before to the 2013 Accident relating to anxiety, depression, back problems, dizziness, fatigue, sleeplessness, PTSD symptoms, sciatica-like pain radiating down her leg; right shoulder pain; and migraine headaches;
- 2) Mrs. Partridge's medical history, as described by the testimony of Dr. Ng and in his report, regarding her pre-existing physical and emotional difficulties (e.g., back pain, neck pain, leg pain, fatigue, sleep disturbance, depression, anxiety, dizziness) corroborating Mrs. Partridge's admissions during cross-examination;
- 3) Mrs. Partridge's significant and repeated absences from work in the months and years prior to the 2013 Accident, including a period of LTD;
- 4) The acknowledgment of Dr. Reebye during cross-examination that Mrs. Partridge suffered from chronic pain and significant psychological issues before the 2013 Accident and that these conditions effected her ability to return to work.

[156] In addition, Dr. Levin's assessment confirmed that Mrs. Partridge has suffered from a long history of depression and anxiety and that she had suffered from PTSD symptomology for some years prior to the 2013 Accident. I accept Dr. Levin's evidence that even in the absence of the 2013 Accident, Mrs. Partridge would continue to experience periods where her depression and anxiety intensifies.

[157] Having considered all the evidence before me, I am unable to accept the evidence and submissions of the plaintiff and her family that she was living a healthy, active and fulsome life in the months or years immediately before the 2013 Accident. I do not doubt that there was once a time, years ago, when Mrs. Partridge was healthy and strong, able to take daily long walks, do a "major amount" of gardening and cook large family meals while working full-time. However, I do not accept that this was the case in the months and years immediately preceding the 2013 Accident. As previously noted, I accept that the 2013 Accident exacerbated Mrs. Partridge's pre-existing conditions. However, I find that the injuries that were caused or exacerbated by the 2013 Accident were not permanent, with the exception of her tinnitus. Having carefully considered the evidence, I have concluded that at the time of trial, Mrs. Partridge suffered from all the pre-existing symptoms, including the physical and emotional difficulties she experienced prior to this 2013 Accident.

However, on a balance of probabilities, I am not persuaded that Mrs. Partridge's physical and emotional condition at the time of trial was worse than it was before the 2013 Accident.

- [158] It is difficult to discern, given the nature of evidence before me, the length of time in which Mrs. Partridge's physical injuries and the exacerbation of her pre-existing conditions continued following the 2013 Accident. While I accept Dr. Gallimore's opinion evidence that the soft tissue injuries sustained by Mrs. Partridge in the 2013 Accident would have resolved over time, I find his opinion that her symptoms would have resolved after approximately six months difficult to accept in light of the totality of the evidence. His six-month estimate might have been more compelling in regard to a plaintiff who was not as vulnerable or had not suffered the extent of pre-existing injuries that Mrs. Partridge suffered. However, Mrs. Partridge's emotional and physical health was already quite tenuous at the time of the 2013 Accident and this is an important distinguishing factor which I must take into account.
- [159] Dr. Reebye's opinion was of some assistance as well on this question but, again, he made factual assumptions that were not ultimately in accordance with this Court's factual findings. The factual foundation underlying his opinion was incomplete and incorrect in some respects as noted above. This also affects my ability to rely heavily on his opinion. Further, Dr. Reebye also acknowledged on cross-examination that Mrs. Partridge suffered from chronic pain and significant psychological issue before the 2013 Accident.
- [160] After much thought and re-examination of the considerable evidentiary matrix before me, I have concluded that the injuries sustained in the 2013 Accident would have resolved no later than two years after the 2013 Accident. That is, Mrs. Partridge's physical and emotional condition, as best as I am able to discern, reverted back to her pre-accident condition approximately two years following the 2013 Accident.
- [161] As noted above, I have also found that Mrs. Partridge suffered a labyrinthine concussion and developed tinnitus after the 2013 Accident, neither of which were present previously. I accept that her symptoms continued to the date of trial. I also accept Dr. Longridge's conclusion that Mrs. Partridge's tinnitus is not debilitating in nature.
- [162] Counsel for Mrs. Partridge took issue with the defendant's reliance upon, and use of, the LifeMark reports and the letters of experts (such as Dr. Buchanan) which were introduced as exhibits under a Document Agreement. Counsel asserts that the Document Agreement and the applicable law on point preclude their use for purposes of the truth of their contents or opinion evidence. These documents were not tendered as proper expert reports; further, their authors did not give evidence and were not made available for cross-examination. Counsel's submissions are very well taken: as presented and standing alone, these documents cannot be relied upon for the truth of their contents or as opinion evidence. I have not done so.

IV. Non-pecuniary Damages

[163] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. It is well established that, in determining general or non-pecuniary damages, each case must be assessed based on the particular facts before the court and in light of the following factors delineated in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46:

[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).

[164] As noted by the Court of Appeal in *Moskaleva v. Laurie*, 2009 BCCA 260 at para. 95, 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*, 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:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury". In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific

circumstances of the individual case".

- [165] I have examined each of the factors in *Stapley* and our Court of Appeal's functional analysis in *Moskaleva* in light of the circumstances of this case. I have also taken into account the specific submissions of the parties on the factors that ought to inform my analysis in assessing non-pecuniary damages. In doing so, I have examined the nature of the injuries that Mrs. Partridge sustained as a result of the 2013 Accident, including whether and to what degree Mrs. Partridge's various injuries have persisted. In addition, I have also considered how Mrs. Partridge's overall health, family life, recreational activities and general lifestyle have been impaired as a result of the 2013 Accident.
- [166] It is well established that awards of non-pecuniary damages and other cases provide a useful guide to the court; however, the specific circumstances of each individual plaintiff must be considered because any award of damages intended to compensate that particular individual for the pain and suffering experienced by them: see *Bricker v. Danyk*, 2015 BCSC 2404 at paras. 134-135; *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189.
- [167] Counsel for the defendant argues that, while the 2013 Accident may have exacerbated Mrs. Partridge's pre-existing condition and injured her right upper and mid-back, these injuries did not have a significant impact on Mrs. Partridge's quality of life, as her life was already significantly impaired. I am unable to accept this submission. The evidence establishes that Mrs. Partridge was in a fragile state as a result of pre-existing emotional and physical injuries or conditions. She was particularly vulnerable. I am of the view that a proper damage award should reflect not only her particular vulnerability but also the heightened impact on her level of suffering and its detrimental impact on her life and lifestyle for the period of approximately two years after the 2013 Accident. In addition, Mrs. Partridge's non-pecuniary losses should reflect her ongoing problems with tinnitus.
- [168] Counsel for the defendant proposes that Mrs. Partridge is entitled to \$50,000 in non-pecuniary damages. He relies on the following decisions of this Court: *Dang v. Chao*, 2013 BCSC 740; *George v. Doe*, 2015 BCSC 442; *Chamberlain v. Giles*, 2008 BCSC 171; *Cheema v. Khan*, 2017 BCSC 974.
- [169] Counsel for Mrs. Partridge asserts, she is entitled to \$150,000 in non-pecuniary or general damages. He relies on the following authorities: *Chevez-Salinas v. Tower*, 2017 BCSC 2068; *Cantin v. Petersen*, 2012 BCSC 549; *Tan v. Mintzler and Miller*, 2016 BCSC 1183; *Cornish v. Khunkhun*, 2015 BCSC 52; *White v. Bysterveld*, 2016 BCSC 1952.
- [170] In addition to the injuries and symptoms outlined above, her counsel points out that Mrs. Partridge also testified that, since the 2013 Accident, she has given up her driver's license due her to her physical symptomology. As well, she continues to have dizzy spells, her tinnitus disturbs her sleep, she has a tendency of falling due to poor balance and instability, and her noise level tolerance is lower. These symptoms have affected her ability to spend time with her grandchildren. Counsel also underscores that she lost her job of 27 years, her intimacy level with her husband has stopped, and she has difficulty riding the bus or getting

onto escalators or elevators. Further, as noted above, counsel asserts that Mrs. Partridge has a sharply diminished recreational life, including a significant reduction in her ability to garden, hike, bake, cycle, cook, go camping and organize family dinners. Lastly, counsel notes that Mrs. Partridge continues to have nightmares, chronic myofascial pain and her keyboarding speed has dropped sharply.

- [171] As addressed earlier in these reasons, I accept that Mrs. Partridge's lifestyle was detrimentally impacted and in a significant way by the 2013 Accident and that she suffered injuries as a result. Nevertheless, as noted above, I have found that her injuries and symptomology resulting from the 2013 Accident are no worse now than they would have been absent the accident, and that the period of injury and exacerbation as a result of this accident is limited to two years. Taking these findings into account, including Mrs. Partridge's continuing tinnitus, I am of the view that she is entitled to an award of \$90,000 in non-pecuniary damages.

V. Past loss of Earning capacity

- [172] The burden of proof of actual past events is a balance of probabilities. An assessment of loss of both past and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. The future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Athey* at para. 27; *Morlan v. Barrett*, 2012 BCCA 66 at para. 38.
- [173] If the plaintiff establishes a real and substantial possibility, the court must weigh the hypothetical or future event according to its relative likelihood: *Athey* at para. 27; *Gao v. Dietrich*, 2018 BCCA 372.
- [174] Compensation for past loss of earning capacity is to be based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.
- [175] Counsel for the defendant argues that even before the 2013 Accident, Mrs. Partridge's life had become so unbearable that she would never have returned to her job. In the alternative, the defendant argues that if one accepts the evidence of Dr. Ng, she would have returned to working 50% of her full-time hours. Further, argues counsel, Mrs. Partridge's past loss of earning capacity should be capped at a maximum of two years at \$42,057; in quantifying this loss, counsel relies on the expert report of the economic consultant, Mark Gosling.
- [176] Counsel for Mrs. Partridge argues that Mrs. Partridge would have been able to return to work full-time but for the 2013 Accident and would have worked 82% of full-time with a past wage loss of \$171,019.00. They argue that Dr. Ng's testimony was unclear and ought not guide this Court. They point out that at the time of the 2013 Accident, Mrs. Partridge was experiencing a number of personal and situational stressors that have since been resolved.

They assert that her physical and emotional challenges would have been accommodated by her employer and this would have facilitated working more than 50% of the time. They underscore that her sick time hours were above the union average at 24.41%. Further, counsel asserts that Mrs. Partridge was on the mend in October 2013, immediately prior to the accident, and that the most difficult part of her job involving gruesome transcriptions of deaths had been transferred to another department in the interior; as such, they argue that Mrs. Partridge would have returned to 82% of full-time work.

[177] I have carefully examined and re-examined Dr. Ng's testimony, the other evidence on this point, as well counsel for Mrs. Partridge's arguments that Dr. Ng's testimony ought not be accepted. Further, I have considered my assessment with a view to its overall fairness and reasonableness: see *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11. I accept Dr. Ng's evidence that, in light of Mrs. Partridge's emotional and physical condition prior to the 2013 Accident, she would be able to work 50% of full-time had the accident not occurred. Dr. Ng had treated Mrs. Partridge for years as her family physician, and his assessment of her condition on this issue was compelling. Put differently, I am of the view that there is a real and substantial possibility that, but for the 2013 Accident, Mrs. Partridge would return to work and work 50% of the time.

[178] I am unable to conclude that there is a real and substantial possibility that Mrs. Partridge would have returned to work 82% of full-time. Her own evidence establishes that she was suffering from long term depression, anxiety, PTSD symptoms, nightmares, sleep disturbance, dizziness, sciatica-like pain down her leg, back pain and neck pain, among other ailments, prior to the 2013 Accident. The expert evidence establishes a persistent level of physical ailments and psychological difficulties, quite apart from situational or isolated life stressors.

[179] In this light, coupled with my conclusion that the 2013 Accident caused injuries which resolved within approximately two years, I have adopted one of the alternate past wage loss scenarios, presented by Mr. Gosling, which is based on a maximum two year period of past wage loss. On this basis, I find that Mrs. Partridge's net wage loss from October 2013 to October 2015 is \$42,057.

[180] Part of the additional damages claimed by Mrs. Partridge relate to healthcare premiums she has paid since 2014 in order to maintain her coverage. The evidence before me is that she would not have been required to pay these premiums had she continued working in the absence of the 2013 Accident. As I have found that she was not able to work following the 2013 Accident for a period of approximately two years due the injuries caused by this accident, I am of the view that she should be compensated for this particular health care cost during that period. The expert report of the economist Curtis Peever provides some guidance on the cost of these premiums. In this light I am of the view that Mrs. Partridge should be compensated approximately \$4100 for this cost.

VI. Loss of future earning capacity

- [181] A claim for loss of future earning capacity raises two key questions: 1) has the plaintiff's earning capacity been impaired by his or her injuries; and, if so 2) what compensation should be awarded for the resulting financial harm that will accrue over time? The assessment of loss must be based on the evidence before me, and not an application of a purely mathematical calculation. The appropriate means of assessment will vary from case to case: *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.); *Pallos v. Insurance Corp. of British Columbia* (1995), 100 B.C.L.R. (2d) 260 (C.A.); *Pett v. Pett*, 2009 BCCA 232.
- [182] Mrs. Partridge submits that she is entitled to damages for future loss of earning capacity in the amount of \$168,618. Counsel for the defendant argues no award for loss of future earning capacity is warranted, as Mrs. Partridge should be able to return to her pre-accident work level by now.
- [183] The difficulty with Mrs. Partridge's position with regard to loss of future earning capacity is that I have found that the physical and psychological damage suffered as a consequence of the 2013 Accident was substantially resolved two years following the accident. Further, I have found that her tinnitus is not debilitating such that it would preclude her from returning to work. As such, I am not persuaded that the 2013 Accident is impeding Mrs. Partridge's ability to earn an income, now or into the future.
- [184] In conclusion, I find that Mrs. Partridge has not established she is entitled to damages for loss of future earning capacity.

VII. COST OF Future Care

- [185] In *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9, at paras. 21-22, the Supreme Court of Canada provides the following guidance on assessing damages for cost of future care:
- [21] Damages for cost of future care are a matter of prediction. No one knows the future. Yet the rule that damages must be assessed once and for all at the time of trial (subject to modification on appeal) requires courts to peer into the future and fix the damages for future care as best they can. In doing so, courts rely on the evidence as to what care is likely to be in the injured person's best interest. Then they calculate the present costs of providing that care and may make an adjustment for the contingency that the future may differ from what the evidence at trial indicates.
- [22] The resulting award may be said to reflect the reasonable or normal expectations of what the injured person will require
- [186] The test for determining the appropriate award for cost of future care is an objective one based on the evidence and on costs reasonably necessary to restore the plaintiff to her pre-accident condition insofar as possible. The costs must also be reasonable in the sense that they are costs the plaintiff will likely incur: see *Pololos* at para. 144; *Loeppky v. Insurance Corporation of British Columbia*, 2012 BCSC 7 at para. 109; *Peters v. Ortner*, 2013 BCSC 1861;

and Tsalamandris v. McLeod, 2012 BCCA 239 at paras. 62-63. Each case must be determined on its own unique evidentiary matrix and the assessment of damages for cost of future care is not a precise accounting exercise: see Krangle at para. 21 and Peters at para. 144.

[187] In Dzumhur v. Davoody, 2015 BCSC 2316, Mr. Justice Kent summarizes the law, providing further guidance as follows:

[244] The principles applicable to the assessment of claims and awards for the cost of future care might be summarized as follows:

- the purpose of any award is to provide physical arrangement for assistance, equipment and facilities directly related to the injuries;
- the focus is on the injuries of the innocent party... Fairness to the other party is achieved by ensuring that the items claimed are legitimate and justifiable;
- the test for determining the appropriate award is an objective one based on medical evidence;
- there must be: (1) a medical justification for the items claimed; and (2) the claim must be reasonable;
- the concept of "medical justification" is not the same or as narrow as "medically necessary";
- admissible evidence from medical professionals (doctors, nurses, occupational therapists, et cetera) can be taken into account to determine future care needs;
- however, specific items of future care need not be expressly approved by medical experts... It is sufficient that the whole of the evidence supports the award for specific items;
- still, particularly in non-catastrophic cases, a little common sense should inform the analysis despite however much particular items might be recommended by experts in the field; and
- no award is appropriate for expenses that the plaintiff would have incurred in any event.

[188] I have also considered that, in awarding future care costs, there is a duty to be reasonable and the cost must be fair to both parties: see Andrews v. Grand and Toy Alberta Ltd., [1978] 2 SCR 229 at 241-242.

[189] Future care costs are intended to compensate a plaintiff for an amount that may reasonably be expected to be expended in putting him or her in the position he or she would have been in absent the injury. In this case, Mrs. Partridge's pre-existing physical and psychological difficulties must be considered because the law does not entitle her to be compensated for any future care she would have required in any event: see Blackwater v. Pint, 2005 SCC 58 at para. 78; O'Connell v. Yung, 2010 BCSC 1764 at para. 98.

- [190] Counsel for Mrs. Partridge asserts that the reasonable cost of future care in this case, including "future loss of housekeeping" amounts to \$230,616.
- [191] Counsel for the defendant notes that the report of Mr. Bruce Hunt forms the basis for the Mrs. Partridge's cost of future care award; however, he argues that Mr. Hunt's report should not be accepted over that of Dr. Gallimore. He submits not only that Dr. Gallimore has "superior qualifications" to Mr. Hunt but that he also assessed Mrs. Partridge more recently and found that she was able physically to do all of the things Mr. Hunt says she could not do.
- [192] Counsel for the defendant points out that, in his report, Dr. Gallimore states, as of March 15, 2018, "Mrs. Partridge's accident related injuries have resolved from an orthopaedic and musculoskeletal standpoint." He further opines that: "there is no evidence for any orthopaedic or musculoskeletal injury which would prevent Mrs. Partridge from engaging in her activities either vocationally or avocationally" and that he "did not find any objective findings which would preclude her from engaging in her regular activities."
- [193] Dr. Gallimore also opined that a greater level of activity would actually benefit Mrs. Partridge:
- As well, she may engage in active exercises and active endeavours such as hiking, baking, gardening, and swimming. In fact, these activities would likely prove to be beneficial in alleviating some of her pain. In addition, I would also opine that Ms. Partridge would be able to function at home to provide for her own care regarding household chores such as cleaning , laundry and dishwashing.
- [194] Counsel for the defendant asserts Dr. Gallimore's assessment should be preferred to that of Mr. Hunt on the issue of the necessity of future care costs.
- [195] I have difficulty relying on Dr. Reebye's opinion regarding the assistance Mrs. Partridge may need with housework, gardening and cooking in the future. As noted above, given my findings of fact relating to both her pre-existing injuries, as compared to Dr. Reebye's limited understanding of these, and in light of my factual findings that Mrs. Partridge's soft tissue injuries from the 2013 Accident have now resolved, his conclusions in this regard are not persuasive. In addition, I accept Dr. Gallimore's evidence that a greater level of activity both vocationally and avocationally would benefit Mrs. Partridge.
- [196] I am in agreement with counsel for the defendant that Mr. Hunt made recommendations for the cost of medications without properly accounting for Mrs. Partridge's pre-accident situation. In the result, the defendant was only prepared to accept some of the expenses associated with vestibular physiotherapy and related requirements for treating Mrs. Partridge's tinnitus as recommended by Dr. Longridge. As such, the defendant submits Mrs. Partridge's cost of future care should be set at \$15,000.

- [197] In light of my findings that the 2013 Accident is not a cause of Mrs. Partridge's current symptomology, with the exception of her tinnitus, most of her claim for the cost of future care is not compensable. I am of the view, however, that Mrs. Partridge is entitled to, and would benefit from, vestibular physiotherapy and tinnitus retraining as recommended by Dr. Longridge. This is a reasonable and necessary cost to assist Mrs. Partridge with her tinnitus.
- [198] Mr. Hunt's report provides that he was unable to identify the number of vestibular rehabilitation treatments required at the time of his report dated March 30, 2017, but he recommended that Mrs. Partridge should be referred back to the LifeMark treatment program for further follow up. He estimated the initial cost of the LifeMark report to be between \$600-\$800, with an initial one hour appointment costing \$100 and follow-up 45 minute appointments cost and \$80 each.
- [199] Mr. Hunt recommended Tinnitus Retraining Therapy ("TRT"), noting that it was "the most universally effective for most conditions and degrees of hearing loss." Mr. Hunt stated that recent studies identified significant improvements with this therapy in 6 to 8 weeks. He also stated that the duration of the TRT program could last 16 to 24 months, adding that "approximately 80% of those who continue with the treatment program protocol significantly reduce tinnitus."
- [200] Mr. Hunt's report indicated two separate categories of costs in regard to a TRT program: 1) a cost of between \$720 and \$1080 relating to group sessions over the course of 18 months; and 2) a cost of between \$960 to \$1440 over the course of the 24 month for individual sessions.
- [201] In addition, Mr. Hunt recommended "AudioNotch", an online software program that creates custom sound therapy to treat tinnitus. He identified an additional cost of \$3000 associated with this coupling AudioNotch with the TRT program.
- [202] I am of the view that the cost of vestibular physiotherapy, the TRT program and AudioNotch are reasonable and medically warranted. I am in agreement with counsel for the defendant that the future care cost of \$15,000 would be reasonable to cover these future costs.

VIII. SPECIAL DAMAGES

- [203] It is well established that an injured person is entitled to recover the reasonable out-of-pocket expenses he or she incurred because of an accident. This entitlement is grounded in the first principle that an injured person is to be restored to the position he or she would have been in had the accident not occurred: *X. v. Y.*, 2011 BCSC 944 at para. 281; *Milina v. Bartsch* at 78.
- [204] Counsel for Mrs. Partridge and for the defendant agreed on special damages in the amount of \$1,910. An award in this amount will follow.

IX. Additional Pecuniary Awards

- [205] Mrs. Partridge has also requested the amount of \$52,608 for "further economic or out-of-pocket expenses", which her counsel distinguished from the costs of future care and special damages. In addition, Mrs. Partridge also claimed for past loss of housekeeping costs of \$27,996. Counsel for the defendant took issue with these costs.
- [206] Part of the additional damages claimed by Mrs. Partridge regarding "out of pocket expenses" included the cost of her health care premiums. I have addressed these costs earlier in my Reasons and allowed these costs, at \$4100, for the two year period I found she was not able to work due to the 2013 Accident. However, having considered the other out-of-expenses claimed; these include the value of future health care premiums to be paid and the future loss of net pension benefit. I find these costs are not compensable in light of my findings of fact regarding the resolution of Mrs. Partridge's injuries following the 2013 Accident. Nonetheless, her claim for past loss of housekeeping capacity does have merit for the period of time she was recovering from the injuries sustained in the 2013 Accident.
- [207] Counsel for Mrs. Partridge argues that since the 2013 Accident, Mrs. Partridge has received a great deal of help from her daughters and son-in-law, as documented by Mr. Hunt and as testified by her daughters. One of her daughters, Ashley, was of particular assistance as she lived in the basement of Mrs. Partridge's home. Mrs. Partridge asserts the value of the housekeeping assistance is \$6000 per year, relying on Mr. Hunt's report.
- [208] Housekeeping awards are granted in the appropriate circumstances. In *O'Connell v. Yung*, 2012 BCCA 57 [O'Connell] at paras. 59–68, our Court of Appeal clarified that homemaking costs, properly considered, are awarded for loss of capacity and are distinct from possible future cost of care claims. An award for homemaking is for the value of the work that would have been done by the plaintiff but which she was incapable of performing because of the injuries at issue. Mrs. Partridge is entitled to an award of housekeeping because she lost this capacity for some time due to the 2013 Accident and because the evidence established her ability to perform household tasks was of value to her, as well as others in the family unit: see also *Kim v. Lin*, 2018 BCCA 77 at para. 31.
- [209] As noted in *O'Connell*, damages for loss of capacity to complete homemaking tasks are not dependent upon whether replacement costs are actually incurred because what is being compensated is the loss of capacity itself. I should also note that in granting this award, I have also considered that such awards should be made conservatively and with caution: *O'Connell* at paras. 59 to 68, and *Westbroek v. Brizuela*, 2014 BCCA 48 at paras. 74 to 78.
- [210] In *Chow v. Nolan* 2013 BCSC 1383, the plaintiff was largely disabled because of a pre-existing traumatic injury but was involved in a subsequent collision that worsened his pre-existing condition. Even though the plaintiff's claim for diminished earning capacity was dismissed, the Court accepted the aggravation of his prior injury further diminished his ability to take care of his household and assessed damage for his loss.

[211] In light of the above authorities and the evidence before me, I find it appropriate to award Mrs. Partridge \$12,000 for the loss of housekeeping capacity for the two-year period following the 2013 Accident.

X. DISPOSITION

[212] Mrs. Partridge is entitled to the following damage awards:

1.

Non-pecuniary Damages:

\$90,000

2.

Lost of Past Earning Capacity:

\$42,057

3.

Cost of Future Care:

\$15,000

4.

Cost of Health Care Premiums:

\$4,100

5.

Cost of Past Housekeeping

\$12,000

6.

Special Damages as agreed:

\$1,910

TOTAL:

\$165,067.00

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

"MORELLATO J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/04/2019BCSC0459.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/partridge-v-buskop-2019>

Prepared on 26 October 2026 · Esheria