IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mariotto v. Rowntree Estate,* 2025 BCSC 1387

Date: 20250718
Docket: M206103
Registry: Vancouver

Between:

Kristina Mariotto

Plaintiff

And

The Estate of Joan Rowntree, Deceased

Defendant

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Plaintiff:	A. Sayn-Wittgenstein B. Souza
Counsel for the Defendant:	A. Spence P. Pandher
Place and Dates of Trial:	Vancouver, B.C. January 27-31, 2025 & February 3-5, 2025
Place and Date of Judgment:	Vancouver, B.C. July 18, 2025

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INTRODUCTION

[1] This is an action for damages resulting from a motor vehicle accident on July 6, 2018, just over seven years ago. While stopped in traffic along Marine Drive in North Vancouver, BC, the plaintiff in her Nissan Xterra SUV was struck from behind by a Chevrolet Cavalier driven by Mrs. Joan Rowntree, who was terminally ill at the time and has since passed away.

[2] It was a minor collision by anyone’s reckoning. I am not sure how fast Mrs. Rowntree was going at impact, and I was not much persuaded by the evidence of the engineer called by the defence who offered an opinion about it. He was consulted years after the fact, never inspected either vehicle, and had to form his views on the matter by looking at some old photographs taken by an ICBC adjuster. I am prepared to accept the argument made by plaintiff’s counsel that the primary point of impact was on the Xterra’s trailer hitch, and it is possible that this fact may have rendered the collision slightly more percussive than if the force had been absorbed by its rear bumper. In my view, however, there is not much to be made of this.

[3] The totality of the evidence establishes with reasonable clarity that Mrs. Rowntree, in the sort of heavy, sclerotic traffic that I gather is the stuff of everyday experience on Marine Drive on any afternoon these days, bumped into Ms. Mariotto’s vehicle at a minimal velocity that caused almost no damage to either vehicle. Ms. Mariotto does not remember a whiplashing effect and denies hitting her head on any of the interior appointments of her vehicle. Her airbags did not deploy. She had a clear memory of speaking to Mrs. Rowntree afterwards, and of being more concerned for the defendant’s well-being than her own. She drove home and did not think that the accident was serious enough for medical attention. She claims not to remember speaking to her husband on her cell phone from the scene or any details of her homeward journey.

[4] The central perplexity of this case is the fact, amply made out in evidence, that after this minor mishap, Ms. Mariotto’s life has substantially unraveled and she

now finds herself seriously and demonstrably incapacitated. She attributes all of her problems to Mrs. Rowntree's momentary lapse of attention while travelling slowly in bumper to bumper traffic. She claims to be afflicted with chronic musculoskeletal pain where I would have supposed that, if soft tissue injuries had been caused at all, they would have resolved within a matter of days or weeks, and she has advanced a case that she suffered a mild traumatic brain injury, or has post-concussion syndrome, either of which she says would account for her present-day substantially diminished mental acuity. She is seeking over $1.6 million dollars in damages.

[5] I had the opportunity to observe Ms. Mariotto in the witness box for a couple of days. I am in a position to confirm that she is noticeably scattered and tangential in her thinking and expression. She lacks physical stamina and tires quickly. She is emotional, upset, frustrated and embarrassed by her inability to focus and properly arrange her thoughts or verbal discourse. She is aware that the key people in her life have become exasperated with her. She is anxious about her future, including as it involves her relationships with the people who are most important to her, especially her husband and sister. I have concluded that none of this is feigned, and that, because it was not evident prior to the accident – such cognitive impairment as she had ever experienced in her life before was reasonably minor and ephemeral – then in the absence of any other proximal cause, her mental state immediately afterward and continuing today must be at least partially attributable to the accident, trivial though it was.

[6] I heard from the plaintiff's husband, Michael Mariotto, who confirmed that his wife has experienced serious physical and mental problems since the accident, and that the quality of their married life has been much compromised by her present-day inability to participate in any of the daily pursuits that they used to enjoy or even to conduct a normal conversation. He testified about how, at first, he was irritated and frustrated by what he perceived to be his wife's exaggerated complaints and problems, before he realised that they were real and getting worse. Most affecting was the testimony of Ms. Mariotto's sister, Julie Welch, who told me about the marked changes in Ms. Mariotto's basic personality and overall competence shortly

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after the accident, and how their previously close and loving relationship has become difficult and strained because of it.

[7] Mr. Mariotto came in for some criticism by defence counsel because in a couple of particulars his evidence was similar to his wife's, but I do not make much of this. There was commonality in their respective evidence about the sorts of things that Ms. Mariotto is no longer capable of doing, but I saw nothing sinister or suspicious about this. I think there may have been a little fudging about the work that Ms. Mariotto claims to have done for her husband's engineering company, but this did not much affect my overall assessment of their evidence. Despite a blemish or two, Mr. Mariotto seemed to me to be a sound and honest witness, and he certainly cannot be accused of a lack of patience or loyalty. I should think that life with the claimant in her present condition must be quite challenging, and his evidence about its negative impact on their domestic life is undeniably genuine. I accept the main thrust of his testimony that, for some reason or other, the accident was the catalyst of a precipitous decline in his wife's ability to function normally in any aspect of their life together.

[8] Mr. Mariotto noticed, for example, that directly after the accident the plaintiff was experiencing worse headaches than she had ever told him about before. He began to notice that she had become forgetful about little things like turning off the element of the kitchen stove, and failing to put food in the freezer after unpacking the groceries. All of a sudden, she was having problems using her computer and staying focussed on the work she was doing. Conversations became scattered and incoherent because the plaintiff was unable to properly order her thoughts or stay on topic. Mr. Mariotto told me that he had never noticed such things before in all of their many years together as a couple. He confirmed that the plaintiff is now easily overwhelmed by everyday tasks that she used to breeze through without difficulty. She is uncharacteristically quick to temper and spends most of her time in a state of upset and frustration. She is limited in her physical activities: no more tennis, cycling, golf or salsa dancing. She is far less capable of looking after the housework than she used to be. She has become introverted, and uncomfortable and unsure of

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herself in social situations, whereas she used to be lively and extroverted. Mr. Mariotto insists that all of this started right after the accident and he can think of no other trigger for it.

[9] Ms. Welch told me that Ms. Mariotto was her beloved “baby sister”, but that for her own sanity she now limits the amount of time that she spends with her. She described a previously sweet-natured, fun, outgoing and athletic younger sister who is now a shadow of her former self. Ms. Welch was out of town when the accident occurred back in July 2018, and when she returned in August she noticed immediately that there was something wrong with Ms. Mariotto, who asked for her help in navigating a computer software system required for use in her job as a medical office administrator. Ms. Welch was similarly employed and had experience with the system in question. She noticed that Ms. Mariotto was abnormally confused, lacked focus, was slow to grasp concepts, made repetitive mistakes performing simple tasks, and could not retain information.

[10] Since then Ms. Welch has noticed other upsetting changes in Ms. Mariotto’s personality. For example, she told me that Ms. Mariotto phones her dozens of times per week, usually to ramble incoherently. If Ms. Welch does not answer her landline, then Ms. Mariotto calls her cell phone repeatedly. If Ms. Welch does not pick up her cell, Ms. Mariotto fills her email and text inboxes with a flood of messages, many of them scarcely comprehensible. They used to get together once a week for lunch or tennis, but she avoids her now because no sense can be made of her, and her company is almost impossible to tolerate. She said “she is not my sister anymore”, “it’s very sad for both of us”, “she’s not the same person”, and “no one wants to spend time with her now.” Ms. Welch began sobbing as she told me all of this even though I could tell that she was trying very hard not to. I have confidence in her testimony and I believe what she told me. I also agree with her overall assessment – that ongoing physical deficits are not Ms. Mariotto’s main problem; it is in her mental and emotional state that there has been a drastic and negative change.

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PLAINTIFF'S BACKGROUND

[11] The evidence establishes that before July 2018 the plaintiff was an active and productive person. She started working in her high school years in retail and restaurants. In her Grade 12 year she suffered a fractured leg after being struck by a car. After graduation she took an accounting course and worked in a department store. She married Mr. Mariotto in 1997 at around the age of 30. They have no children. They moved to Ontario in 1999 where Mr. Mariotto completed an engineering degree. While there, the plaintiff worked in retail and trained to become an esthetician. She also sold cleaning supplies to supplement her income.

[12] On returning to BC, the plaintiff worked in a couple of health spas and then in sales. She was involved in a motor vehicle accident in her 30s that resulted in treatment for headaches by a neurologist. Deciding that she no longer wanted to have a job that required her to be on the road, she enrolled in a dental office reception certification program at BCIT. She continued to work full time while completing the program at night.

[13] The plaintiff finished the course at the top of her class and was hired right out of school in a general dental clinic. In 2005 she started working for a Burnaby orthodontist's practice. In 2007, the couple moved to North Vancouver from Port Coquitlam, meaning a longer commute to work for the plaintiff. She was initially hired as a receptionist, but her role expanded over time and came to include office administration, marketing, and the training and supervision of staff. She worked three days per week, and this seems to have been her typical work schedule until after the accident.

[14] In 2014, the plaintiff suffered a bout of sudden extreme fatigue combined with dangerously low blood pressure. It took some time, but eventually she was diagnosed with Addison's disease. This is a rare disorder that affects production of the adrenal steroids that regulate metabolism, blood pressure and responses to stress. Treatment included trials with different steroids, taken at different times and in different amounts until eventually a stable routine was established. She now takes daily doses of steroids to manage her condition.

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[15] Also in 2014, the plaintiff began to work for her husband's management company, Lexcor Management, on her days off from the orthodontist's clinic. Her work included assisting with draft proposals, writing letters, bookkeeping, and so on. In 2016, due to the stress of commuting to Burnaby and her desire to limit her daily dose of steroids, the plaintiff quit her job. After some time off, she was persuaded to return to the office by her former employer, who offered her flexible office hours so that she could avoid peak commuter traffic.

[16] Before July 2018 the plaintiff had an active life. This included going to the gym with her husband several times a week, playing tennis, dog walking, cycling, golfing, and salsa dancing. She and Mr. Mariotto also enjoyed get-togethers with friends at homes or restaurants as well as going to the movies. The plaintiff liked gardening and working with her husband on house improvements.

[17] Near the end of 2017, the plaintiff started having problems at work. There were tensions amongst staff members about various things, and it seems that the head of the practice, Dr. Mah, was not happy with the way his business was operating. In January 2018, for reasons that were not made clear to me and probably do not matter, Dr. Mah issued an edict that, henceforth, all staff would have to work regular business hours from 8:00 a.m. to 5:00 p.m. and remain in the office throughout. The plaintiff's flexible working arrangements stopped. She was upset by this sudden change, and worried that the added stress would require her to dose herself with steroids oftener than she liked.

[18] The plaintiff's endocrinologist, Dr. Thompson, advised her not to return to work. On January 24, 2018, Dr. Thompson provided the plaintiff with a letter placing her on medical leave in which he said she was unable to work due to an "Addisonian Crisis", meaning, I think, that her symptomology had become acute and debilitating. Dr. Thompson increased the plaintiff's daily steroid dose to 35 mg whereas she had previously been managing on 25 mg. By March 2018, the plaintiff felt well enough to return to work. She secured new employment with an endodontist, Dr. Rezaie, whose practice was located close to the plaintiff's home. Her commute was much

decreased. She was expected to work 24 hours per week, and her duties included marketing and meeting with potential referral sources.

[19] On May 29, 2018, the plaintiff was reporting to her family doctor that her daily steroid dose had been reduced back to 25 mg. In the doctor's clinical records for that date there is a note saying that the plaintiff reported being "very active overall, go go go and …felt good". She claimed to be working out regularly with her husband, and to be feeling much better after leaving her previous "stressful office situation". The plaintiff testified that her new job was considerably slower in pace than at Dr. Mah's office. She was able to adjust her daily steroid intake to a lower level than she required while working for Dr. Mah.

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[20] This, it seems, was the general state of the plaintiff's affairs just before the accident occurred. Since then, as I have said, she claims to be substantially incapacitated. She has dropped all of her recreational pursuits and pastimes, she cannot do basic housework – one of the commonalities in the testimony of the plaintiff and her husband was that it can take her an entire day to clean a single room – and she says that she is no longer fit for any sort of employment. I heard testimony from an occupational therapist, Ms. Hettie de Beer, who has worked closely with the plaintiff since the accident, and she corroborated this claim. Ms. de Beer confirmed, for example, that the plaintiff is enrolled in a real estate marketing program, but she does not seem to be capable of meeting any of its requirements and is unlikely to complete it.

MEDICAL EVIDENCE

Clinical Records

[21] The parties came to a document agreement in accordance with which three binders of the plaintiff's clinical medical records were handed up to me. These reveal, in brief terms, that the plaintiff has a complicated medical profile, and has been under the care of a variety of physicians for an array of problems for quite some number of years. The lion's share of the clinicals are from her GP, Dr. Satake, who acts as her general health overseer and her source of referrals to specialists.

His records show that, in the months before the accident, Ms. Mariotto was under care for perimenopausal symptomology, severe asthma, episodic migraines, chronic obstructive pulmonary disease, gastroesophageal reflux disease, Vitamin B-12 deficiency, hypothyroidism, and Addison's disease.

[22] On September 19, 2017, under a year before the accident, Dr. Satake noted that the plaintiff claimed to have hurt her back so badly that she thought it would "collapse". On January 30, 2018, he noted that the plaintiff had recently experienced an "Addisonian crisis" related to stress at her workplace for which her endocrinologist had placed her on indefinite medical leave. The plaintiff reported that she was having difficulties with speech and that she could not "think straight". On March 9, 2018, she reported that she continued to be "extremely fatigued" despite being off work for a month, but as I have said, on May 29, 2018, just a month or so before the accident, she reported being extremely active, working out at the gym with her husband every night, and feeling good.

[23] The plaintiff's first consultation with Dr. Satake after the accident was on July 11, 2018, so within five days. She reported that she had been doing pilates and yoga daily at home, and that she had been pain free before the accident. She reported that she was rear-ended while stopped in traffic. She was wearing her seatbelt. On impact she felt a jolt but no loss of consciousness. She said she was able to get out of her vehicle and exchange information with the other driver. At the scene she felt "relatively OK", and was able to drive home, but the same day she had a burning pain in her left hip, thigh and calf. She reported being miserable the next day with a burning ache in the lower back and superior glutes.

[24] On August 1, 2018 the plaintiff reported to Dr. Satake that she was experiencing pain across her lower back and left lower leg and thigh, posterior neck pain and tightness. She wondered if her Addison's disease had flared up. The previous week she had been exhausted and was having trouble concentrating at work. She reported that she was very forgetful, losing the drift of conversations and unable to recall what was said. She thought she was getting Alzheimer's disease.

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[25] Dr. Satake also noted Dr. Thompson's August 1, 2018 opinion letter to him that the symptomology that Ms. Mariotto was experiencing was not an Addison's flareup, but likely due to a concussion. It is clear from all of the clinicals that Dr. Satake believes this diagnosis to be correct, with symptoms including mistake-making at routine tasks, poor concentration, poor decision-making, and poor retention of information. I am satisfied on the basis of all the evidence that I have heard and examined that such symptoms are also associated with Addison's disease. The plaintiff reported that she felt like sleeping all the time, that she had been having headaches and a burning sensation in her head. She insisted that all of these symptoms had come on in the immediate aftermath of the accident. She said that she did not feel "too terrible" after the accident but that the cognitive problems set in very shortly thereafter.

[26] The next consultation with Dr. Satake was on September 13, 2018 where the plaintiff reported that she was still experiencing concussion-like symptoms and was worried that she had Alzheimer's disease. She said she was easily confused and had a poor memory. She reported being stressed at work, making uncharacteristic mistakes, and forgetting little things like people's phone numbers. On September 24, 2018 Dr. Satake noted that her concussion symptoms were continuing. His notes say that she "has felt terrible since the MVA, no energy, very foggy headed".

[27] On September 25, 2018 the plaintiff reported to Dr. Satake that she had gone to the emergency ward at St. Paul's Hospital the previous night because she felt like she had been "hit by a bus". She was achy all over, even her bones hurt, her anterior chest felt tight, her breathing was laboured. She reported experiencing bad headaches and felt "completely off still, fuzzy headed, completely out of it." She reported having been very forgetful at times. On October 5, 2018 the plaintiff reported that she had had four bad headaches in the past week, that she was having trouble focussing, felt lots of pressure in her head, and said that looking at a computer screen gave her a headache. She said that headaches had become more frequent, that she was experiencing photophobia, and repeated that she was unable to concentrate properly.

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[28] On October 29, 2018 Dr. Satake noted that the plaintiff was on medical leave from work in Dr. Rezaie's office. Her last day was Friday, October 26, 2018. She reported that she had been staying off "media" in the past week because of difficulty looking at computer screens. She had a bad headache on October 27, 2018 which was like a "vice grip" around her head. She reported not functioning well with poor concentration, visual auras and blurred vision. She said that her concentration had been horrible with lots of difficulties focussing. She said that she had forgotten the contents of recent conversations with family and friends. Her short-term memory was poor. She claimed to be forgetting the details of many everyday things, for example putting water in the dog's bowl, and she was still very tired.

[29] Dr. Satake's continued assessment was "ongoing post-concussion symptoms" and his clinical notes after October 2018 say much the same thing: that the plaintiff was exhibiting post-concussive symptoms, that she was very forgetful, fatigued, confused, and so on. The plaintiff consulted with Dr. Satake about other things as well, but as far as the accident is concerned, Dr. Satake's notes make it clear that his diagnosis was one of post-concussion syndrome combined with lingering soft-tissue injuries. He referred the plaintiff to a concussion therapist, Dr. Jileeley, and then to the GF Strong Concussion Clinic where she was evaluated by a physiatrist, Dr. Derry Dance, on July 3, 2019. Dr. Dance noted that the symptoms described by the plaintiff were consistent with post-concussion syndrome, but he made no formal diagnosis. He thought that there might be some other explanation for how she was feeling. I am unaware if there was ever any follow-up with Dr. Dance. He did not perform any neurocognitive testing.

[30] Dr. Satake referred Ms. Mariotto to a neurologist, Dr. Sarah Kaiway. Dr. Kaiway wrote a letter to Dr. Satake recording the following under the heading "Impression and Plan":

> [The plaintiff] describes multiple symptoms consistent with post-concussive syndrome after an accident where she was rear-ended.
>
> She is almost two years out from this and continues to have symptoms which unfortunately means that she will likely have some persistent symptoms and may not get back to 100 percent of normal. I expect she can get further

> improvement however the exact degree of improvement is variable and there is no way to predict that.
>
> She [the plaintiff] is doing the right things with occupational therapy and gradually increasing her pace and her endurance at various functions. It is a matter of the brain trying to relearn things to help this.

[31] Dr. Kaiway recommended a variety of psychotropic medications and noted, in common with other clinicians whose records I have read, that the plaintiff has an aversion to taking medications and sometimes does not follow medical advice.

[32] The plaintiff continued complaining to Dr. Satake over multiple more recent consultations about her diminished cognition, about how frustrated she is at what her life has become, and how she feels that her life is passing her by. She made consistent reference to soft-tissue pain in her hips, back, shoulder and neck. She continued to experience photophobia and headaches.

Expert Opinion Evidence

[33] The plaintiff presented medical opinion evidence from Dr. Lisa Caillier, a physiatrist, and Dr. Mitchell Spivak, a psychiatrist.

Dr. Caillier, Physiatrist

[34] Dr. Caillier examined the plaintiff on June 3, 2022, nearly four years after her accident. Dr. Caillier reviewed Ms. Mariotto's medical history prior to the motor vehicle accidents and the injuries that arose from them. As far as she could tell from this review, the plaintiff had recovered fully from any physical injuries that she had suffered before the accident.

[35] Dr. Caillier offered the following diagnoses:

1) Mild traumatic brain injury

[36] This diagnosis was based on the plaintiff's self-reporting about altered memory, limited attention, concentration, recall, reduced organisational and multitasking skills, and physiological symptoms in in the form of fatigue, headaches, dizziness and noise, motion and light sensitivity. Dr. Caillier described Ms. Mariotto's

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cognitive dysfunction as "multifactorial", not only secondary to the mild traumatic brain injury but also secondary to her ongoing headaches, chronic pain, fatigue and mental health. She concluded that the mild traumatic brain injury and associated complaints have a negative impact on the plaintiff's ability to engage in activities of her choosing, and that given the persistence of her complaints, her prognosis is poor. Dr. Caillier recommended that the plaintiff should take medications for her depressed mood, which she thought may also be contributing to her chronic fatigue.

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2) Chronic post-traumatic headaches

[37] Dr. Caillier reported that the plaintiff's headaches are likely cervicogenic in nature and are worsened by her traumatic brain injury, mental health symptoms, and engaging in physical and cognitive exertion. She said that they could also be contributing to her feelings of nausea and light sensitivity. In Dr. Caillier's opinion, the likelihood of the plaintiff becoming headache-free is poor.

3) Emotional and psychological symptoms

[38] Dr. Caillier observed that the plaintiff was experiencing depression, reduced interest and motivation in daily life, anger, emotional lability, shorter temper, and irritability. Dr. Caillier suggested that the plaintiff should consider medications for these problem in consultation with a psychiatrist or psychologist.

4) Chronic pain, soft tissue in nature, involving her neck, upper back, shoulder girdles and lower back regions

[39] The plaintiff reported ongoing neck, upper back, and shoulder pain, and headaches that had progressively worsened. Dr. Caillier offered the opinion that, but-for the accident, the plaintiff would likely not have her ongoing musculoskeletal pain complaints. She noted that the plaintiff has become physically deconditioned, which can increase her susceptibility to increased pain.

[40] Dr. Caillier reported that the likelihood of the plaintiff becoming completely pain free is poor and, and that she is at increased risk of worsening pain. Active

rehabilitation was recommended to improve her posture and strengthen her neck, upper back, shoulders, lower back, core pelvis and hips. The report also recommends future exercise programs with a kinesiologist, physiotherapy, massage therapy, lifelong access to a gym/pool as well as an ergonomic set up for work and assistance with housecleaning.

5) Multifactorial cognitive dysfunction

[41] Dr. Caillier said that the plaintiff's cognitive dysfunction is secondary to a mild traumatic brain injury, and is contributed to by chronic pain, headaches, fatigue and anxiety. Dr. Caillier believes that, but for the accident, Ms. Mariotto would likely not have her current and ongoing level of difficulties. Her report states that improved management of her physical, emotional and psychological symptoms will likely translate to improved cognition, but that she is unlikely to become symptom free.

[42] Dr. Caillier's opinion is that the combination of soft-tissue pain, headaches, physical deconditioning, emotional and psychological symptoms, visual symptoms, cognitive dysfunction and fatigue negatively impacts the plaintiff's overall fitness in such a manner that it is unlikely that she will ever return to her pre-accident level of functioning. Dr. Caillier reported that with management of her symptoms, it is reasonable to expect that she will be able to return to work, at least on a part-time basis, but she will have to be careful to ensure that her efforts do not exceed her capacities or she will experience an aggravation of her symptoms and a return to reduced functionality.

[43] Dr. Caillier believes that the plaintiff's history of frequent headaches increased her susceptibility to more severe and frequent headaches after the accident, and she says that the plaintiff would not be experiencing the ongoing severity and frequency of headache complaints absent the accident. Dr. Caillier also noted that the plaintiff's pre-existing conditions, such as Addison's disease, upper respiratory tract infections, hypothyroidism as well as her B12 deficiency, could all contribute to her fatigue. Finally, she confirmed that Addison's disease can cause cognitive fog and memory deficits.

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Dr. Spivak, Psychiatrist

[44] Dr. Spivak examined the plaintiff at her counsel's request on November 21, 2023. The plaintiff told him that she did not hit her head in the accident or lose consciousness, but said that she has significant memory loss surrounding the events – including, getting out of her car at the scene, speaking with her husband and driving home – which Dr. Spivak suggested is indicative of her having sustained a mild traumatic brain injury. He noted the plaintiff's multiple challenges post-accident to include: cognitive issues, fatigue, inability to tolerate competing stimuli, headaches, chronic pain and dysphoria plus frustration over her circumstances. Dr. Spivak confirmed in cross-examination that these symptoms "overlap" with those associated with Addison's disease.

[45] In Dr. Spivak's opinion, Ms. Mariotto's primary challenges relate to post-concussive symptomology. He reported that such symptoms appear for a variety of reasons, not only as a result of a concussion. Generally, he said, they do not persist beyond a few months after an individual's injury, and where they do it is likely because of multiple factors including pain and psychological problems. Dr. Spivak reported that it is difficult to know to what extent the plaintiff's symptoms are being driven by psychological factors versus physical injury. If they are driven by psychological factors, the most appropriate diagnosis would be somatic symptom disorder with predominant pain, which he explained to me as meaning that the plaintiff is someone who believes in and is committed to her own perception of her symptoms, whether their cause is real or imagined.

[46] Referring to the plaintiff's recurrent depressive symptoms and anxiety, Dr. Spivak has given a diagnosis of adjustment disorder with mixed features of anxiety and depression. His prognosis is guarded to poor, noting that it had been five years since the accident with limited improvement and high levels of dysfunction. He suggested that if the plaintiff's physical capacities improve, he would expect commensurate psychological improvement.

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Dr. Webber, Neurologist

[47] Dr. Webber examined the plaintiff at defence counsel's request on February 2, 2024. She described the plaintiff as alert, oriented and cooperative, but anxious. She performed some cognitive testing in which the plaintiff showed deficits in visuospatial skills, attention, language functioning, and recall. The plaintiff's speech fluctuated from normal to tangential, and occasionally to slow speech that was more effortful. Dr. Webber suggested that the testing may not be reflective of Ms. Mariotto's true cognitive capabilities as she was quite emotional throughout and could not attend to the testing properly.

[48] Dr. Webber's report and testimony included the following observations, opinions, and conclusions:

1) Possible concussion

[49] Dr. Webber emphasised that some of the plaintiff's clinical records are not consistent with a concussion, including that she does not think that she lost consciousness in the accident. A concussion diagnosis is based upon a loss of consciousness, amnesia or an alteration in the level of consciousness immediately after a traumatic incident. Dr. Webber said that plaintiff's recorded history is not consistent with a concussion, but she could not rule it out. Dr. Webber deferred to an expert in biomechanics, but thought it unlikely that there was a sufficient acceleration/deceleration dynamic to cause concussion. The plaintiff herself told Dr. Webber that "it seemed like a very minimal accident at the time."

2) Post-concussion syndrome

[50] Dr. Webber described the symptoms of post-concussion syndrome as including headaches, dizziness, fatigue, irritability, and concentration and memory difficulties. These symptoms are non-specific and are often mimicked by several other conditions, including chronic pain from soft-tissue injuries, anxiety and depression. Dr. Webber said that the diagnosis of post-concussion syndrome first

requires the diagnosis of a concussion which Dr. Webber was not convinced could be made.

[51] Dr. Webber noted that all the plaintiff's symptoms are self-reported. That being so, she seemed to think it a matter of some concern that plaintiff presented herself as being very high energy, with no specific concerns involving headaches or fatigue prior to the accident. This was inconsistent, Dr. Webber thought, with medical records indicating a history of severe migraine headaches, cognitive symptoms and fatigue, all of which pre-dated the accident and were attributed to her Addison's disease. Dr. Webber also referred to the fact that the plaintiff's endocrinologist, Dr. Thompson, insisted that she go on disability leave from work just prior to the accident.

3) Headaches

[52] The plaintiff denied pre-existing headaches, but Dr. Webber noted that based on her medical records they were a significant concern before the accident, and it is likely they would have persisted absent the accident. Based on the plaintiff's subjective history, Dr. Webber believes that there is probably a post-traumatic component to her headaches. Dr. Webber's view is that it is difficult to determine the extent to which the plaintiff's headaches are related to a pre-existing condition. She also noted that Dr. Kaiway had recommended psychotropic medications with her symptoms but the plaintiff had refused to take them.

4) Summary

[53] Dr. Webber considered the plaintiffs extensive pre-existing medical history, including Addison's disease, hypothyroidism, migraines, and anxiety. She said that these conditions could contribute to cognitive difficulties, fatigue, and other symptoms reported by the plaintiff, such as memory issues and headaches. Dr. Webber's overall opinion was that the plaintiff's cognitive complaints were "multifactorial" and more likely to be the result of these pre-existing conditions, rather than the accident.

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CAUSATION

[54] The starting point for determining causation is the "but for" test. The plaintiff bears the burden of establishing that "but for" the defendant's negligent act or omission, the injury would not have occurred: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-14. The accident at issue does not need to be the sole cause of the plaintiff's injuries. It must only exceed the "*de minimis*" range, explained in *Athey* at para. 19 as follows:

> The law does not excuse a defendant from liability merely because other causal factors for which he is not responsible also helped produce the harm: Fleming, supra, at p. 200. It is sufficient if the defendant's negligence was a cause of the harm: School Division of Assiniboine South, No. 3 v. Greater Winnipeg Gas Co... [1973] 6 WWH. 765 (S.C.C.); Ken Cooper- Stephenson, Personal Injury Damages in Canada (2nd ed. 1996), at p. 748.

[55] Defendants must take their victims as they find them, even if the plaintiff's injuries appear to be more severe than they might have been for someone else. A defendant is liable for the plaintiff's injuries, even if they are unexpectedly severe owing to a pre-existing condition: *Athey* at para. 34. However, a defendant need not compensate a plaintiff for any debilitating effects of a pre-existing condition that the plaintiff would have experienced anyway: *Athey* at para. 35, *Dornan v. Silva*, 2021 BCCA 228, para 44-45.

[56] In *Saadati v. Moorhead*, 2017 SCC 28 at paras. 35-38, the Supreme Court confirmed that in cases of negligence psychological injury should not be treated differently from physical injury. Plaintiffs are not obliged to prove that their mental injuries caused by negligence rise to the level of recognisable psychiatric illnesses, bearing in mind that compensable mental injury is not proven by the existence merely of psychological upset. Expert evidence can be material to determining whether a mental injury has been shown, and it may be risky to advance such a claim without it, but it is not required as a matter of law. It remains open to the trier of fact to find on the basis of non-expert evidence that the plaintiff has proven the occurrence of a mental injury.

[57] If psychiatric injury is consequential to a physical injury for which the defendant is responsible, the defendant is also responsible for the psychiatric injury, even if it was unforeseeable: *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258 at para. 74. However, I must also bear in mind the following warning from *Blackwater v. Plint*, 2005 SCC 58 at para. 78:

> [78] It is important to distinguish between causation as the source of the loss and the rules of damage assessment in tort. The rules of causation consider generally whether "but for" the defendant's acts, the plaintiff's damages would have been incurred on a balance of probabilities. Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway...

Otherwise stated, in assessing the appropriate quantum of damages required to return the plaintiff to her original condition, it is necessary to take account of any measurable risk that a non-tortious cause, such as a pre-existing condition, would have detrimentally affected the plaintiff regardless of the defendant's negligence: *Brill v. Forsyth*, 2024 BCSC 124 at para. 104.

[58] Both latent and active pre-existing conditions must be considered in assessing the plaintiff's original position: *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para. 30. A measurable risk that a pre-existing condition would have detrimentally affected the plaintiff in future regardless of the defendant's negligence need not be proved on a balance of probabilities:

> Whether manifest or not, a weakness inherent in a plaintiff that might realistically cause or contribute to the loss claimed regardless of the tort is relevant to the assessment of damages. It is a contingency that should be accounted for in the award. Moreover, such a contingency does not have to be proven to a certainty. Rather, it should be given weight according to its relative likelihood.

See *T.N.W.A.* at para. 48, and also *Barnes v. Richardson*, 2008 BCSC 1349 at paras. 87-89, aff'd 2010 BCCA 116.

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DISCUSSION

[59] In the present case, the defence to what amounts to a claim of accident-related total disability is that the state in which the plaintiff finds herself today is likely caused by a variety of pre-existing conditions, including migraines, severe asthma, vitamin B deficiency, hypothyroidism, and the physiological effects of menopause. By far and away her most serious pre-existing condition is Addison's disease, a major illness diagnosed in 2014 which she conceded in evidence has sometimes caused her cognitive depletion and interfered with her ability to work. However, it is the plaintiff's evidence, backed up by her husband and sister, that her Addisonian symptomology, though burdensome, affected her life and functioning to only a moderate degree before the accident. With occasional exceptions when she took time off work for medical reasons, including in early 2018 just before the accident, the plaintiff was capable of maintaining a reasonably high degree of functionality in her employment as an office administrator, even if she only worked part-time, and she was able to pursue and enjoy all of her many recreational and social activities.

[60] Defence counsel has argued that Addison's disease "inherently causes fatigue, cognitive dysfunction, and memory issues", and that it accounts, in whole or in part, for all of the plaintiff's present-day difficulties. If this is true, I would have been very grateful to receive evidence from the species of medical specialist – an endocrinologist – best qualified to confirm it. As it is, I have only a rather general endorsement from specialists in other realms of medicine that the symptoms of Addison's are similar to those brought on by a concussion. I do note, however, that in the clinical records that I was given to look at there is regular correspondence from Dr. David Thompson, the plaintiff's endocrinologist, and her GP, Dr. Satake, about the management of her Addison's disease. In the midst of it there is a letter dated August 1, 2018, less than a month after the accident, to the effect that the plaintiff's reported mental health symptomology was not due to Addison's disease. The likelier cause, Dr. Thompson thought, was a concussion resulting from the accident.

[61] Perhaps I should not wonder about such things, but I did find it a little surprising that, despite the fact that the plaintiff has been under the care of an array of medical specialists for many years, including, as I have said, an endocrinologist for her Addison's disease, no treating physician made the witness list for either side. While the plaintiff's cognitive impairments appear to me to be serious and genuine, they remain only vaguely substantiated from a medical viewpoint. I gather that she was under the care of a neuropsychologist, a Dr. Cohen, for a year or so after the accident, but I received no evidence from him, not even his clinical records. If the plaintiff was ever the subject of any formal neuropsychological assessment or testing to objectively evaluate her limitations, nobody has told me about it. In a case like the present one, where the plaintiff is asking to be paid a very large sum of money mostly on the basis of psychological injury, I thought the absence of such evidence a little odd.

[62] The expert medical witnesses who testified formed their opinions based on single examinations of the plaintiff lasting a couple of hours each. The earliest of them was conducted roughly three years and the latest over six years post-accident. It must have been obvious from the get-go that the plaintiff's pre-existing Addison's disease would be an important issue to address, and yet neither side thought it advisable to summon up the evidence of an endocrinologist. If Addison's disease impacted the plaintiff's pre-accident functionality as little as she insists, confirmatory evidence from her treating endocrinologist would have come in handy. If, as alleged by defence counsel in argument, all her current problems are attributable to Addison's disease, then surely an independent endocrinological opinion confirming it would have been useful for me to receive. Instead, no medical opinion evidence from either side on the subject. I was also told that the defence commissioned an expert biomechanical engineering report but decided not to rely on it.

[63] I cannot, as they say, simply throw up my hands and claim to be unable to solve this case, and I am not empowered to commission investigations of my own. I must do what I can with the materials provided and limit myself to the evidence adduced. I must use my own common sense in configuring a balanced result that is

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fair to both parties. My conclusion on the totality of the evidence presented is that the dynamics of the motor vehicle accident in question are unlikely to have produced any blow, disturbance or upset to the plaintiff that could have caused a concussion or a mild traumatic brain injury, even if such things may be said to be possible. I am not with Dr. Caillier, the physiatrist, or Dr. Spivak, the psychiatrist, on this point. I am more inclined to the opinion expressed by the defence neurologist, Dr. Webber, that the plaintiff's ongoing symptoms are "multifactorial" and are likely related to her complex medical history and profile, which includes but is by no means limited to the fact that she was involved in a minor motor vehicle collision on July 6, 2018. I cannot accept the main defence theory that the plaintiff's present state of dysfunction must be entirely related to Addison's disease, because I received scant medical evidence to support it and I have no business guessing or speculating about such things.

[64] What the plaintiff is really asking me to do in this case is to infer that the accident must be the cause of all her present-day problems because there is no other available explanation. Dr. Spivak made the point expressly in his medicolegal report:

> While Ms. Mariotto has a past history of significant health issues as well as medication sensitivity, there are no other factors that could account for the onset of her symptoms. Ms. Mariotto's symptoms have followed logically and temporally with the indexed accident. Absent the indexed accident, it is difficult to imagine that Ms. Mariotto would have spontaneously developed the symptoms that she has continually reported since the time of the indexed accident.

[65] But is this sound reasoning? When it comes to patients who, like the plaintiff, present with significant and varied health problems, it is never difficult to imagine that they might get worse, and even significantly so, without any additional external cause. As this court observed in *White v. Stonestreet*, 2006 BCSC 801:

> [74] The inference from a temporal sequence to a causal connection…is not always reliable. In fact, this form of reasoning so often results in false conclusions that logicians have given it a Latin name. It is sometimes referred to as the fallacy of *post hoc ergo propter hoc*: "after this therefore because of this."
>
> [75] In searching for causes, a temporal connection is sometimes the only thing to go on. But if a mere temporal connection is going to form the basis for a conclusion about the cause of an event, then it is important to examine

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> that temporal connection carefully. Just how close are the events in time? Were there other events happening around the same time, or even closer in time, that would provide an alternate, and more accurate, explanation of the true cause?

[66] The plaintiff's testimony about the dynamics of the accident is somewhat vague but nevertheless consistent. She denies having hit her head or lost consciousness and has never, as far as I can tell, reported any acceleration/deceleration dynamic in her descriptions of the force of the impact. She has maintained that she experienced gaps in memory immediately afterwards, but then the accident was a long time ago and people often have no specific recollection of such routine things as driving home. I accept the defendant's argument that the plaintiff's present-day condition and presentation is multi-factorial, but what cannot be denied is that she was substantially capable in most aspects of her daily functioning before the accident, and immediately after it, she experienced a marked decline in her physical and mental functionality that is substantially debilitating and does not seem to be improving.

[67] The present case is one in which, as foreshadowed in *White*, the temporal connection is the only thing to go on. Having considered the matter carefully, I have come to the view, not with supreme confidence, but with confidence enough, that because promptly after the accident the plaintiff's symptoms became more pronounced and debilitating than anything she had experienced before, and her functionality went rapidly and sharply downhill without any other identifiable cause, then the accident, minor though it was, must have acted as some sort of a catalyst to it all. The persistence of these symptoms would seem unusual, but because I have concluded that the plaintiff is not feigning them, and because I accept the testimony of Mr. Mariotto and Ms. Welch about their everyday exhibition, I have concluded that the likeliest explanation for it is Dr. Spivak's somatic symptom disorder with predominant pain diagnosis wherein, at the risk of repetition, she believes in and is committed to her own perception of her post-accident symptoms, whether their cause is real or imagined; and that, in the context of her actual or perceived physical symptoms, she experiences functional impairment that is far greater than would be

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expected; and that it is difficult to know to what extent her symptoms are being driven by psychological factors versus physical injury.

[68] All of that said, it is inconceivable that the plaintiff's condition today is entirely attributable to the negligence of the late Mrs. Rowntree. To grant her an award of $1.6 million against Mrs. Rowntree's estate for a fender bender would be a gross injustice. I am prepared to accept that the accident played some part in producing the serious psychological deficits from which the plaintiff now suffers, but I think it must be judiciously limited. It is my settled opinion, furthermore, that if this minor collision played a role in the production of the sort of outsized present-day symptomology that the plaintiff and her relatives told me about, then there is a very substantial likelihood that she would have ended up in the same place by the occurrence of some other everyday mishap involving a comparatively slight transfer of force to her person.

[69] I repeat the governing principle quoted above from *Blackwater* that the defendant need not put the plaintiff in a better position than before the accident, and cannot be obliged to compensate her for any damages that she would have suffered anyway. I find that the "original position" to which the plaintiff must be restored includes that she was pre-disposed to significant psychological injury by the application of any reasonably minor unexpected physical force or shock to her person, and that there is a high likelihood that she would have ended up in her present condition regardless of Mrs. Rowntree's negligence. Bearing this in mind, and with the ultimate goal of resolving the case in a manner that is fair to both parties, I have reached the conclusion that the extent to which the plaintiff's present condition is attributable to the accident in question must be limited to no more than 25 percent, and accordingly I will apply a 75 percent discount ("the contingency discount") across all heads of damages: see, for example, *Andrews v. Mainster*, 2014 BCSC 541 at paras 190-203.

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DAMAGES

Non-Pecuniary Damages

[70] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The effect of the injuries on a plaintiff's particular circumstances must be taken into consideration. Factors to be considered in assessing non-pecuniary damages include the age of the plaintiff, nature of the injury, severity and duration of pain, disability, emotional suffering, loss or impairment of life, impairment of family, marital and social relationships, impairment of physical and mental abilities and loss of lifestyle: see *Stapley v. Hejslet*, 2006 BCCA 34, at para. 45-46.

[71] The plaintiff relies on the following case authorities in seeking an award under this heading of $220,000: *Choi v. Ottahal*, 2022 BCSC 237; *Meelesmoen v. Cullen*, 2022 BCSC 1985; *Paleshnuik v. Dulay*, 2023 BCSC 714; and *Wright v. Admiraal*, 2022 BCSC 742. The defendant, meanwhile, proposes the following authorities as comparators in support of a range of $75,000-$125,000: *Allen v. Luca*, 2021 BCSC 14; *Han v. Dular*, 2023 BCSC 108; and *Roth v. Cape Scott Cedar Products Ltd.*, 2024 BCSC 1431.

[72] No two cases are identical, of course, and each one must be evaluated individually, but previous decisions are useful in establishing a general range of damages in roughly analogous circumstances. Having regard to the case law referred to me, as well as the *Stapley* factors, the plaintiff's personal circumstances, including the impairment of her housekeeping capacities, an appropriate award before applying the contingency discount would be $200,000, and the discounted amount is $50,000.

Past Wage Loss

[73] The evidence persuades me that, with the exception of several months after the accident during which she tried to keep going, the plaintiff was disabled from working during the interval between the accident and trial. There are two components to the plaintiff's past wage loss.

a) The plaintiff worked part-time in dental offices as a receptionist and manager. She earned approximately $32/hour for an average of 24 hours per week.

b) In addition, the plaintiff worked for her husband's company, Lexcor Management. She earned $3,000/per month ($36,000/year).

[74] The starting point is the net present value of the plaintiff's past loss of income earning capacity as set out in the report of the plaintiff's expert economist, Mr. Benning. His calculations assume the plaintiff's continued employment from when she left work on October 26, 2018 to the date of the trial at both her dental job and her Lexcor employment, and are as follows:

a) Dental Employment (gross): $300,669 (about 52% of the total gross lost)

b) Lexcor Employment (gross): $282,036 (about 48% of the total gross lost)

[75] Mr. Benning then provided a grand total of the net income from both sources. This amount of net past loss of earnings comes to $409,928. His calculations consider the negative contingency of workforce participation and reductions for 10 weeks in 2020 due to the COVID-19 pandemic.

[76] The plaintiff's work history shows a stable history of attachment to the work force, albeit always on a part-time basis. Prior to her departure from Dr. Mah's office, she had worked for approximately 13 years with one employer. I conclude that, but for the accident, she would have continued working as a dental office administrator and for her husband on the same terms as before.

[77] Accordingly, a fair award for past wage loss, before the contingency discount, would be $409,928, an amount that builds in a reduction for tax and post-accident earnings. Of this amount, $213,162 is the net past wage loss from dental employment and the balance that would be attributed to Lexcor $196,766. I do not accept the defendant's position that the Lexcor income was merely an income splitting or tax avoidance strategy. Mr. Mariotto confirmed that the plaintiff did office

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and administrative work that otherwise he would have had to do, freeing him up to focus on professional tasks. The arrangement may have had some ancillary tax advantages, but I have no firm reason to reject the evidence of both the plaintiff and her husband that she performed useful and valuable services for Lexcor and earned her pay.

[78] The plaintiff conceded in final submissions, however, that the arrangement did not include time-keeping or a clear record of the work done, and that this may have resulted in the over-estimation of her probable income as calculated by Mr. Benning. She volunteered a reduction for loss of earning capacity arising from her work for Lexcor to $115,000. I think this is fair. This brings her claim for loss of past income earning capacity to $213,162 (dental) and $115,000 (Lexcor) for a total of $328,162. Applying the contingency discount, my award under this heading is $82,040.50.

Loss of Future Income Earning Capacity

[79] As I have said, the evidence in its totality indicates quite clearly to me that the plaintiff is now functionally unemployable. The evidence of Mr. Mariotto and Ms. Welch speaks for itself, and the medical opinion evidence is prevailingly that it would not be reasonable to expect, at this stage seven years after the accident, that the plaintiff will return to work in any capacity given her emotional, physical, psychological, and cognitive symptoms. There was some medical opinion offered (by Dr. Caillier and Dr. Webber) that the plaintiff might be able to manage some part-time employment with improvement in her physical and mental health, but I would rate the likelihood that the plaintiff's injuries will resolve or substantially improve as quite slim. On all of the evidence, including that of the occupational therapist, Ms. de Beer, I think it unlikely that the plaintiff will succeed in retraining as a realtor.

[80] If the accident had not occurred, the likelihood is that the plaintiff would have continued working part-time in a dental office as a receptionist/office manager and part time for Lexcor. Using the earnings approach, which in my view would be suited to the circumstances of the plaintiff's long, stable and predictable work history, Mr.

Benning was asked to provide the present-day value of the plaintiff's future wage loss in two scenarios as follows:

a) But for the accident, the plaintiff would have worked in dental offices and Lexcor until retirement at age 65 – net present value of future earnings – $616,793.

b) But for the accident, the plaintiff would have worked in dental offices and Lexcor until retirement at age 70 – net present value of future earnings – $959,439.

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[81] Using the halfway point between 65 and 70, and also reducing the notional future earnings from Lexcor on the same basis applied for past wage loss, the plaintiff calculates that the appropriate figure is $627,972 with reductions already applied for actuarial factors such as life expectancy and market labour conditions. I think this is a reasonable figure. After the contingency discount my award under this heading is $156,993.

Cost of Future Care

[82] A plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her as far as possible to her pre-accident condition. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiffs mental and physical health: *Milina v. Bartsch*, [1985] B.C.J. No. 2762; *Williams v. Low*, 2000 BCSC 345; *Spehar v. Beazley*, 2002 BCSC 1104; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351. Future care costs are "justified" if they are both medically necessary and likely to be incurred by the plaintiff.

[83] The plaintiff retained an occupational therapist, Ms. Sandra Hale, to perform an assessment of her current and future care needs together with cost estimates to pay for them. Mr. Benning, the economist, put together a table of present values for each item of future care so that an appropriate lump sum award can be made today.

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[84] In her report, Ms. Hale purported to include only care items for accident-related injuries and disability, and left out any costs related to the plaintiff's pre-existing Addison's disease. In coming to her final recommendations, Ms. Hale incorporated the recommendations of Dr. Caillier and Dr. Spivak, along with her own recommendations. Ms. Hale's recommendations were not much challenged in cross examination, and the defendant presented no contrary or responsive evidence.

[85] This does not mean that I am bound to accept all of the recommendations. Indeed, I have been urged by the plaintiff herself to adjust some of the costs downwards to account for the contingency that she is unlikely to incur them all. During the trial, I heard evidence that the plaintiff is hesitant to take some medications and outright refuses to take others, such as anti-depressants. This reluctance, as I said earlier, is referred to with some regularity in the plaintiff's medical records. Dr. Spivak noted in his medicolegal report that:

> [The plaintiff] could potentially benefit from a trial of medications to treat her symptoms. Some clinicians have previously suggested serotonergic antidepressants, while others have proposed using stimulant medications. While in theory these may be of value, I do not believe that they will be helpful for Ms. Mariotto. The level of anticipatory anxiety she has regarding all medications, let alone psychotropic medications is quite high. She has experienced severe side effects in the past from virtually all medications and I would expect this to have a high likelihood of recurring should she take psychotropic medications.

[86] For these reasons, the plaintiff has quite rightly limited her demand for costs of future care, and only a portion of the amounts set out in Mr. Benning's report are actually claimed. I am not going to allow the amounts claimed for items of ergonomic equipment, because I heard no evidence from the plaintiff that she requires or will use such things. I will also reduce to $50,000 the award sought for future recommended medications based on the likelihood that the plaintiff will not purchase or use most of them. I will allow the claim for occupational therapy for three years but not for annual maintenance thereafter because I think it will be unnecessary. The remaining items and amounts seem reasonable enough to me. The resulting award under this heading is $338,997 reduced by the contingency deduction to $84,749.25.

Special Damages

[87] The plaintiff presented a list of special damages in evidence and confirmed in her testimony that the costs referred to were incurred. This was unchallenged by defendant's counsel. She is entitled to recover all reasonable expenses incurred as a result of her injuries. The reasonableness of a particular expense is to be measured in the context of the surrounding circumstances at the time that the expense was incurred: see *Culver v. Skrypnyk*, 2019 BCSC 807 at para. 255. The costs demanded seem reasonable enough. I award the amount of $17,640.92 reduced by the contingency deduction to $4,410.23.

Summary

[88] I hereby order the defendant to pay the plaintiff the following amounts:

Non-pecuniary damages	$ 50,000.00
Past wage loss	82,040.50
Future loss of income earning capacity	156,993.00
Cost of future care	84,749.25
Special damages	4,410.23
Total	**$378,192.98**

[89] The plaintiff's action is allowed to this extent. Costs may be spoken to if necessary.

"Baird J."

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