

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Meyers v. Hall*,  
2025 BCSC 1751

Date: 20250909  
Docket: M182372  
Registry: Victoria

Between:

**John Edward Meyers**

Plaintiff

And:

**Natasha Nicole Hall**

Defendant

Before: The Honourable Mr. Justice A. Saunders

## Reasons for Judgment

Counsel for the Plaintiff:

P. Penner

Counsel for the Defendant:

M. O'Meara

Place and Date of Trial:

Victoria, B.C.  
February 18-21, 26-27, 2025

Place and Date of Judgment:

Victoria, B.C.  
September 9, 2025

**Introduction**

[1] The plaintiff, Mr. Meyers, was injured in a high-speed, head-on motor vehicle collision on the Malahat Highway, north of Victoria, B.C., on June 23, 2016. The defendant admits liability in negligence. Further, the defendant acknowledges that the evidence establishes Mr. Meyers' entitlement to non-pecuniary damages for his pain and suffering, and to damages for his loss of future income-earning capacity. These reasons address the quantification of those claims. They also address Mr. Meyers' further claims for damages for his cost of future care and future housekeeping, which claims the defendant says are not made out on the evidence. Special damages are agreed.

[2] Mr. Meyers was 49 years old at the time of the accident. He was self-employed as a hardwood flooring installer. In previous years, from approximately 2006 up to 2012, he performed installations exclusively for Sears Canada. When that arrangement came to an end, he had to rebuild his business by cultivating relationships with other flooring products retailers. He says that he was in the process of that rebuilding of the volume of business when the accident intervened.

**Injuries and Return to Work**

[3] The subject collision was very serious. Mr. Meyers' was restrained by his airbag and seatbelt, and avoided catastrophic injury. His engine caught fire, and he was briefly trapped inside the vehicle before a bystander was able to open his door. He was taken by ambulance to Victoria General Hospital, treated, prescribed opioid pain medication, and released that same day. His injuries were of the soft tissue nature, with significant bruising, multiple abrasions and cuts. Initially he suffered extreme pain in his ribs, but this resolved completely over the course of a few months. He also suffered neck pain, which resolved to some extent and then became more pronounced when he returned to work. As his initial injuries resolved, he began to experience pain and stiffness in the low back, particularly at the end of the day. His most significant injury is ongoing pain in his hips, which has become chronic.

[4] Mr. Meyers was off work entirely for about six weeks, and then gradually returned to work. He took things slow to give his body a chance to heal; for example, he testified, on a 1,000 sq. ft. installation job that would typically take him about five days, he would take up to nine or ten days. His evidence was that typically, pre-accident, a working day would be from 8:00 a.m. until 5:00 p.m., but could be as late as 8:00 or 9:00 p.m. on occasion if he began to fall behind. Post-accident, Mr. Meyers' testimony was that in 2016 and early 2017, as he recalled, he would manage his pain by working, as a rule, no later than 3:30 p.m.

[5] (I do note that his evidence as to his hours on the job was contradicted to some extent by his wife, Ms. Landega: she agreed that Mr. Meyers would, pre-accident, typically be "out the door" by 7:00 or 7:30 a.m., but she testified that he would be home by about 4:00 or 4:30 p.m. – meaning he would have had to leave the job site earlier – and that if he needed to stay late to finish a job he would be home "by 6:00 or so". If her recollection is more accurate – and I saw no reason to question it – it would suggest that Mr. Meyers' work schedule was perhaps not as dramatically impacted by his injuries as he attested to.)

[6] "Around 2017", Mr. Meyers said – his evidence of specific dates and time periods was vague – he was turning away some work because he couldn't fit jobs in as tightly as had previously been his practice. However, he testified that as the months went by he started to get a lot better, and within about six months of returning to work he was doing "considerably better" and for the most part working without pain. His recollection was that by late 2017 or early 2018 he started trying to "pack things in", working longer hours. This however resulted in his back tightening, his hip throbbing, and his neck bothering him at the end of the day. He would start the day with his pain level at three on a scale of 10; by the end of the day he would be at 8/10, very uncomfortable, especially around the top of his hip where the seat belt had restrained him. He soldiered on, using Advil for pain control; on bad days, a minimum of eight and possibly as many as 12 to 14 200 mg tablets a day.

[7] Mr. Meyers undertook physiotherapy treatments for his neck and hip – 38 sessions in total, between October 2016 and March 2019. He has had one cortisone injection into his hip, and one into the neck. He found the injections provided some relief, to the neck in particular, as his range of motion had become very limited by pain. He did not continue with any injections due to concerns he had around possible side effects, though he said that would definitely consider the neck injections again if his pain level ever returned to what he had experienced previously. He also started vaping cannabis, as a sleep aid. His daily pain levels made him very irritable, which strained relations with his wife.

[8] In 2019, Mr. Meyers testified, he was losing money due to having to turn down jobs, and he therefore began subcontracting some work, taking what I refer to as a 15% commission. His income in 2019-2022 was made up of both employment income and commissions from subcontracting.

[9] 2021 was Mr. Meyers' last full year working in flooring installation. By the fall of that year he concluded that he could not continue. What he described as the "final straw" came when, with the increased workload, he realized he was having to persistently overcome his pain and stiffness by levering himself up into a standing position, using his mallet, at the end of everyday. He thought, "I can't keep doing this". He continued working, but began to look for a position in flooring sales. He was supported in this decision by his family physician, and by his wife. The defence independent medical expert Dr. Bentley, a physiatrist, agreed that this change in careers was a reasonable course of action for someone dealing with chronic pain.

[10] In August 2022 Mr. Meyers began working in sales with Edgar & Miner Floor Coverings. He was then 56 years old. He is on a base salary of \$3,000 per month, which is much reduced from his previous income levels. He has the potential for earning commission income if he exceeds a prescribed minimum quarterly sales volume, but as of the date of trial has been unable to attain that goal.

[11] Ms. Van Auken, a now-retired flooring salesperson, testified. She was with Sears Canada when Mr. Meyers was working for them exclusively, and she referred

her clients to him for installation work. She thought very highly of the quality of his work and his reliability, and said that he earned a lot of repeat business. She would tell her clients, “I have the best installer in Victoria”. She said she never had an installer like him: he cared, he was proud of his work, he loved his job, and it showed.

[12] When Sears Canada closed, Ms. Van Auken moved to the flooring retailer Jordans. She was able to get Mr. Meyers on their list of approved installers, and she continued referring work to him. In 2016, she became aware that Mr. Meyers had been injured in an accident, and after he returned to work she would hear him at times complaining of how much pain he was in. She recalled that he tried gradually to return to his pre-accident level of working, but continued to struggle. She would see him exhibit pain behaviour, such as moving slowly.

[13] Ms. Van Auken left Jordans in the fall of 2020; the business shut down for two months due to the pandemic, and when she returned business was slow – “there wasn’t enough work” – and she was unhappy when her compensation was unilaterally restructured. She moved to Hourigan’s, and was there for the post-COVID surge in renovation work and the accompanying increase in flooring sales in 2021 and 2022. She was able to continue using Mr. Meyers for installations. She was not surprised however when he had to leave the installation business due to his injuries.

[14] The plaintiff’s witness Mr. Hammon installed floors with Mr. Meyers both before and after the accident. He testified as to the nature of the work, and as to Mr. Meyers’ abilities and performance pre-and post-accident. In particular, he worked with Mr. Meyers on a big job in the 2017-2018 time period. He described Mr. Meyers while working on that job as being definitely slower than he had been previously, and a little bit more careful. Mr. Meyers kept up, and did a good job; he was still fast, faster than any other employee Mr. Hammon had had, but definitely not as quick as he used to be, and seemed tired.

**Current Status**

[15] Mr. Meyer's pain has greatly improved since he began this new career. He said he has not suffered prolonged hip pain attacks since about six months after he began at Edgar & Miner; there is still some pain, but he described it as "manageable". His new job is sedentary, and Mr. Meyers said that if he sits too long his back will tighten up.

[16] Mr. Meyers' wife, Diane, testified that he seems to be about 90% improved, and is now much happier.

[17] Prior to the accident, Mr. Meyers would frequently go fishing for steelhead on the winter runs in and around Port Renfrew, climbing through forests and wading through chest-deep water. He has not been able to fish since the accident. He would also enjoy 30- to 45-minute trail walks with his wife; now, they walk on easier paths. His injuries have not impacted his ability to travel: since the accident, he and his wife have been on vacations to Costa Rica, Mexico, London, and Paris.

[18] Mr. Meyers testified that his sleep continues to be disturbed by pain. Pre-accident, he would sleep through the night. Now he considers six hours of sleep to be a good night; on a bad night he can have as little as two to four hours. With severe bouts he will use zopiclone to sleep.

[19] The circumstances of the accident caused some psychological trauma in the form of anxiety around driving. Mr. Meyers had counselling – five sessions, that were paid for by ICBC – and learned distraction techniques to deal with this. He testified that his anxiety around driving is not as severe as it was; he still gets quite anxious, particularly as a passenger, but knows how to cope with it. Also, for several years he periodically had a disturbing recurring dream about the accident, but this has not been an issue for about the last two years prior to trial.

### Non-Pecuniary Damages

[20] Non-pecuniary damages award provide compensation for pain, suffering, and loss of enjoyment of life. Assessments are aimed at holistically capturing degrees of disability and impairment of functioning in a manner that is as consistent as possible with similar cases, adjusted for inflation. It is not a mathematical process of counting up days of hospitalization, treatment sessions, and doses of medication. Each comparator case turns on its unique facts, and inevitably each will have distinguishing features which differentiate the basis for the non-pecuniary damages claim. The comparator cases can therefore only provide a rough guide.

[21] The chief injuries to be compensated in this case are the high degree of chronic pain that Mr. Meyers stoically endured as he continued to work as a flooring installer, and the continuing, though now more manageable, symptoms that he will have to live with for the rest of his life. His driving anxiety and the loss of his recreational activity are significant. So too is the loss of Mr. Meyers career, which was a great source of pride and satisfaction; I found him entirely genuine in stating that in that job he felt he had found his calling, and that is now closed to him. The trauma of the accident itself is also a factor.

[22] The plaintiff submits that non-pecuniary damages in the range of \$140,000 would be reasonable, given comparison to the following decisions: *Pisani v. Pearce*, 2012 BCSC 1118 (\$80,000/approx. \$110,000 adjusted for inflation); *Bramley v. Lee*, 2016 BCSC 1105 (\$80,000/\$110,000); *Day v Roberts*, 2019 BCSC 1982 (\$120,000/\$145,000); and *Ghazgbi v Bhamrah*, 2020 BCSC 496 (\$110,000/\$130,000). The plaintiffs in *Pisani* and *Day* were much younger than Mr. Meyers – respectively, 20 and 25 years old at the time of the accident – and therefore were facing many more years of pain and discomfort. The impact of their injuries on their lifestyle was more pronounced. The plaintiff Day's continuing chronic pain symptoms were more severe, and she had significant post-accident depression. The persistent subjective complaints of the plaintiff Ghazgbi were more significant and he suffered profound changes in his mood that significantly impacted his

personal relationships. *Bramley* is more closely comparable; Mr. Meyers' degree of suffering was greater, as he worked through a more physical job, in considerable pain, for a longer period of time before his change of career, but the impact on the plaintiff Bramley's lifestyle and relationships was more serious.

[23] The defence submits damages should be assessed at \$90,000, and presents as comparators *Belos v. Michaels*, 2017 BCSC 1217 (\$75,000/\$95,000); *Jackson v. Davis*, 2021 BCSC 380 (\$100,000/\$115,000); and *Bramley*. *Belos* is somewhat comparable in respect of the range of injuries suffered, but, although those injuries left the plaintiff tired at the end of the working day, with no energy for family or recreational activities, his ability to work was unimpaired; Mr. Meyers' condition was significantly worse. The plaintiff Jackson was a young woman who sustained diffuse soft tissue injuries resulting in chronic and intermittently severe pain, which would possibly improve but were not likely to fully resolve. She had gone from being an athletic, adventurous, outgoing person to being withdrawn and anxious, and her choice of careers would be limited.

[24] I award Mr. Meyers \$105,000 under this head of damages.

### **Loss of Earning Capacity**

[25] Mr. Meyers' claim for loss of earning capacity has two components: his pre-trial losses, where his actual earnings can be compared with what he might have earned, but for the accident, under various scenarios; and his future losses, the assessment of which requires the further step of determining what his actual future earnings will be.

[26] As to both past and future losses, Mr. Meyers has tendered the expert opinion report of an economist, Mr. Szekely. His analysis is based on assumptions, provided by plaintiff's counsel, as to what Mr. Meyers' without-accident gross business income would have been. Mr. Szekely determined Mr. Meyers' fixed and variable costs on a yearly basis and deducted those expenses to obtain a without-accident total income for each year. He calculated the net loss – the difference between the

without-accident and with-accident total income – for each year up to the date of trial, on both a pre-tax and after-tax basis.

### **Past Earning Capacity Loss**

[27] With respect to the past losses, the without-accident gross earnings assumptions made by Mr. Szekely are based on the theory that Mr. Meyers, as he testified, was still at the time of the accident in the process of building up his business, and that but for the accident his volume of work and gross income would have steadily increased. Mr. Szekely was asked to assume that absent the accident, Mr. Meyers would have had gross income (before expenses) of \$73,000 in 2016; a 5% increase in 2017; a 10% increase in 2018 (reflecting a 5% volume increase and an additional 5% for rate increases, it being Mr. Meyers' evidence that he actually did apply increases that year); further increases of 5% in each of 2019 and 2020; \$123,750 for 2021 (\$120,000 in gross billings plus 15% of \$25,000 in excess work contracted out to a third party); \$120,000 in 2022; \$130,000 in 2023; and \$130,000 for 2024 and thereafter until retirement, before factoring-in inflation and productivity adjustments.

[28] Based on these assumptions, and accounting for fixed and variable expenses in each year, Mr. Szekely estimates a cumulative pre-trial loss of income of \$304,230 on a pre-tax basis; and, after deducting income tax and EI premiums, \$216,333.

[29] The plaintiff submits that if anything, the assumptions Mr. Szekely was asked to make were too modest, in that Mr. Meyers testified to having actually increased his per-square-foot rates by 25% in the case of hardwood flooring, and 33% in the case of laminate and vinyl plank installations, in 2018 (not merely the 5% Mr. Szekely was asked to assume). It is submitted that if some aspects of Mr. Szekely's analysis ended up overestimating the past loss, those factors are more than offset by his assumption of lower rate increases.

[30] The defence says that Mr. Szekely's assumptions are not supported by the evidence, and that no past loss of income has been proven.

[31] I find Mr. Szekely's analysis is unpersuasive and only marginally helpful. The assumptions he was asked to make are arbitrary and, in some respects, do not conform with the evidence. I point to the following concerns:

- a) Mr. Meyers says that as of the date of the accident his business was still in the post-Sears growth phase. His tax returns show that his most profitable year, when working solely for Sears, was 2008, when he had net income of just over \$68,000; this, he said, represented him working at about 85%-90% of his full potential capacity. He contrasted this with his 2015 income of only \$52,625 which, he said, represented him working to only about 60%-65% of his full capacity. At that point, he submits, he had only partially succeeded in moving back up to his previous level of earnings, and he believed that growth in the volume of work would continue. However, Mr. Meyers produces no business records to substantiate his contention that his business, pre-accident, was still in the growth phase, and no documentary evidence to substantiate his claims as to the pre-accident and post-accident availability of work and his actual hours of work. There are no contracts, work orders, time sheets or site logs, or any other records save Mr. Meyers' tax returns. Further, there is no evidence from other retailers that they had work that would have been directed to Mr. Meyers in the pre-accident years, had they known of his availability.
- b) This theory of Mr. Meyers' being relatively under-employed prior to the accident, with room to grow, was contradicted by Ms. Van Auken, who testified that Mr. Meyers was very busy, working as fast and as much as he could. She said that when she was at Jordans, she monopolized most of Mr. Meyers' time, and that there were customers she wanted to refer to Mr. Meyers but could not, because he was too busy;

- c) Mr. Meyers' tax returns, dating back to his dedicated engagement with Sears Canada in 2006, show a high degree of variability in income from one year to the next. It is logical that at least some of this variability reflected variable demand in the economy for construction/renovation contractors. Aside from evidence from Ms. Van Auken that 2016, 2021 and 2022 were very good years in retail, and evidence from his current employer Mr. McClymont (who had not been a regular source of installation business for Mr. Meyers) that 2023 was a very good year – as to 2024, he said, “not so much” – there is no independent evidence as to demand in the post-accident years for flooring installation services, and nothing to substantiate the claim that continuing steady growth year-over-year would reasonably be expected;
- d) The assumption that without the accident Mr. Meyers' income would have increased by 5% in the year 2020, in particular, ignores the impact that lockdowns during the COVID pandemic would have had. Mr. Szekely's analysis therefore implicitly attributes all income loss during that year to the accident. Ms. Van Auken's evidence however was that Jordans – Mr. Meyers' chief source of work – shut down for about two months that year, and that when she returned she they were not busy. To assume 2020 without-accident gross earnings would have increased to approximately \$92,800 seems speculative to the point of being fanciful;
- e) The without-accident assumed gross income for 2021, without accounting for additional earnings through commission on subcontracted work, of \$123,750 represents a 40% increase over the assumed \$88,400 in 2019, the last full year pre-pandemic. Though Ms. Van Auken's evidence was that business was very strong in 2021 and 2022 due to the post-COVID renovation boom, there is no evidence to justify an increase of that magnitude.

- f) Mr. Szekely assumed that Mr. Meyers' guaranteed minimum salary of \$36,000 would be adjusted for inflation commencing January 1, 2024. This assumption is not borne out on the evidence, and therefore ended up slightly overstating the degree to which Mr. Meyers has been able to mitigate his loss of business income.
- g) Mr. Szekely's report, in analyzing Mr. Meyers' future with-accident earnings, refers to Statistics Canada data showing median earnings of males in British Columbia employed full-time as retail salespersons and visual merchandisers, in the industry of home furnishings stores. Mr. Szekely testified that he did not, however, look into whether there was a comparable database for floor covering contractors. It is unfortunate that he was not directed to make such an investigation and was instead offered arbitrary assumptions. I take judicial notice of the fact that Statistics Canada does gather earnings data for floor covering installers under National Occupational Classification 73113. Such data could potentially have at least provided information as to industry trends. Without such evidence, the income growth assumptions Mr. Szekely was asked to make are mere conjecture.

[32] I accept that Mr. Meyers' post-accident, pre-trial earnings as a floor installer were impaired by his injuries. I accept, on a balance of probabilities, that this led to some reduction in his average daily working hours, and made him less efficient when he was working, all of which meant that jobs took longer to do, and he was not able to earn at the same pace. I find that his condition improved, and the impairment of his earning capacity decreased, from 2017 onwards, though plateaued without further resolution. I further find that he was somewhat successful in increasing his volume of work – “squeezing more in”, as he put it – and though he was in pain, he carried on stoically for as long as he could. I also find that his decision to change careers in 2022 was reasonable. Given the lack of documentary and other evidence, no precise calculation of his loss is possible. Instead, I must strive to do what is fair, to both parties, on the evidence that is available.

[33] I approach assessment of the loss on the following general basis. First, I make assumptions as to Mr. Meyers' 2016 without-accident income, and as to how that income would have been earned in the pre-accident and post-accident halves of the year. I compare his earnings under that scenario with what he actually earned, the difference standing as an estimate of his income loss for that year. From that estimate, I extrapolate the degree to which his injuries were impairing his income in that year and, given Mr. Meyers' evidence as to the course of his improvement following his return to work, the degree of impairment of earning capacity up to 2021, his last full year working as a flooring installer. I make further assumptions as to Mr. Meyers' income following the post-COVID renovation boom. I stress that in undertaking this analysis, I am not losing sight of the principle that the quantification of damages is fundamentally to be a matter of assessment, not mathematical calculation.

- a) I begin with the same assumptions as Mr. Szekely did for 2016: without-accident gross business income of \$73,000, total income (net of fixed and variable expenses) of \$55,757. These amounts are only slightly higher than the pre-accident 2014 and 2015 figures, and I view that modest assumed increase for 2016 as justified on the basis of Ms. Van Auken's testimony that 2016 was a busy year.
- b) Further, given Mr. Meyers' evidence that January and February are often slow months, and that he took a three-week vacation in May 2016, I assume that approximately \$25,000 of \$55,760 in without-accident total income that year would have been earned by Mr. Meyers prior to the date of the accident. But for the accident, this would leave approximately \$30,760 to be earned in the second half of the year. Following this logic, if Mr. Meyers actually did earn \$25,000 in the first half of 2016, this means that of his actual, with-accident 2016 total income of \$43,096, the balance of \$18,096 would have been earned post-accident. Mr. Meyers returned to work on about August 7, 2016; this left 80% of the second half of the year in which to work. But for the accident, therefore, during that August 7 –

December 31 period, 80% of \$30,760 could have been earned: \$24,610. Comparing that to Mr. Meyers' actual earnings during that period, of \$18,096, his loss of employment income, before taxes, was approximately \$6,500. His injuries therefore can be seen, on these assumptions, as having caused something in the range of a 25% impairment of his earning capacity ( $(24,610 - 18,096) / 24,610 = 26.47\%$ ) in 2016.

- c) On the basis of Mr. Meyers' evidence of being pain-free, within approximately six months of returning to work, so long as he was working a somewhat reduced workload, I proceed to assess his losses from 2017 onwards on the basis that his income earning capacity was impaired to the extent of 15%. In arriving at this figure, I do not mean to slight the pain and discomfort Mr. Meyers suffered as he attempted to increase his workload. I accept that he pressed on with his work, under considerable pain. The issue here is not what his symptoms were, but rather what has been proven on a balance of probabilities as to the impact on his earnings of his symptoms, regardless of their intensity and frequency. In the absence of any documentary evidence, witness testimony, or medical opinion that would support a higher potential level of earnings or a greater level of functional impairment, it would not be just to the defendant to base the award on anything much greater than that 15% figure.
- d) Applying the 15% impairment factor to his actual total income for 2017 and 2018 (when his income was derived solely from his own billings, i.e. no subcontracting), his pre-tax losses for those two years, respectively, would be approximately \$9,400 and \$9,600.
- e) Mr. Meyers' income in 2019-2021 was derived from both his own billings, and subcontracts on which he took a 15% commission (i.e. he paid 85% of the revenue obtained from subcontracted work, and treated that payment as a variable expense deducted from his gross earnings). Factoring-out the 15% commission income (derived from the subcontracting expenses

indicated on his tax returns, multiplied by 15/85 or 17.65%), Mr. Meyers' actual total income from his own work amounted to approximately \$57,610 in 2019; \$46,750 in 2020; and \$65,470 in 2021. Viewing those without-accident total income amounts as resulting from a 15% reduction in his earning capacity, his pre-tax losses in each of those years respectively would be estimated at approximately \$10,200 in 2019; \$8,250 in 2020; and \$11,550 in 2021.

- f) In 2022, Mr. Meyers had gross business income of \$68,308, and total income of \$45,448. As he began working in his new career in sales in August 2022, I treat those amounts as having been earned in the first seven months of that year. Mr. Szekely was not asked to assume that any of that income was earned through subcontracting, and on his Table 1 spreadsheet he simply recorded the sub-contracts and other variable expenses as "?". I find it inconceivable, however, given the amounts, that this income could have been earned by Mr. Meyers alone in only seven months; some considerable portion of that 2022 income must have come through commissions on subcontracting.
- g) If the 2021 ratio of total income from own work to gross income is applied to the 2022 total income, Mr. Meyers' actual total income from his own work over that seven-month period would have been approximately \$31,250. When that is assumed to have resulted from a 15% impairment level, his without-accident total income over seven months therefore would have been approximately \$36,800. Earning at that rate over the whole 12 months of 2022, his total income from own work would have been approximately \$63,100. Mr. Meyers' actual total income in 2022 (own work, subcontracting commissions, and employment income from his new sales job) was \$45,448, meaning his loss that year, under these assumptions, could be estimated at approximately \$17,600.

- h) Determination of Mr. Meyers' losses for 2023-2025, when he had left the installation business, requires assumptions as to what his gross income would have been in those years but for the accident. For those years, there is no substantial evidence that the post-COVID renovation boom persisted. (Mr. McClymont, Mr. Meyers' current employer, testified that on the retail side, 2023 was a very good year for his business, but it cannot be said to what extent that was a result of the quality and price of the items sold, as opposed to a higher volume of sales that would have resulted in higher earnings for installers; and as to whether 2024 was as good a year, Mr. McClymont testified, "not so much".) Proof of past events is determined on a balance of probabilities, and I am not satisfied that there was sustained increased demand in that industry that would have continued to positively impact Mr. Meyers' earnings. I find it is reasonable, instead, to assume that in 2023-2025 Mr. Meyer's gross business income in floor installation would have reverted to pre-pandemic norms, with some adjustment for inflation.
- i) On the foregoing analyses, based on a 15% loss of earnings capacity, and utilizing the same ratio of fixed and variable expenses to gross income that Mr. Meyers actually had in 2017-2019, his without-accident gross business income in those years would have been in the range of approximately \$86,000 - \$88,000. Therefore, allowing for increases for wage inflation at the 2023/2024 rate of 5.25% implicit in Mr. Szekely's report (which generously assumes Mr. Meyers would have had the flexibility to adjust his piece work rates to match inflation), without-accident gross business income could be reasonably assumed at the level of approximately \$92,000 for 2023; \$96,800 for 2024; and \$101,800 for 2025. Applying the same historical ratio of fixed and variable expenses, his without-accident total income in each of those years respectively would then be estimated at \$69,000, \$72,600, and \$76,350. Deducting his actual with-accident earnings for each of those years, the difference – his pre-tax

losses – would be \$33,000 in 2023; \$36,600 in 2024; and – prorated to the first day of trial – approximately \$4,450 for the first six weeks of 2025.

[34] The following table summarizes the foregoing estimation of Mr. Meyers’ pre-tax past losses of income earning capacity.

2016	\$ 6,500
2017	\$ 9,400
2018	\$ 9,600
2019	\$10,200
2020	\$ 8,250
2021	\$11,550
2022	\$17,600
2023	\$33,000
2024	\$36,600
2025 (to February 18)	\$ 4,450

[35] I assess Mr. Meyers’ past loss of earning capacity in those amounts, with deductions to be made for income tax and employment insurance premiums, pursuant to the *Insurance (Vehicle) Act*, RSBC 1996, c 231. I leave it to counsel to calculate the applicable deductions, with liberty to apply.

**Future Earning Capacity Loss**

[36] Mr. Szekely’s report provides actuarial multipliers that account for mortality and discounting, and economic multipliers that additionally account for labour market contingencies applicable on average to British Columbia males with high school diplomas. As noted above, Mr. Szekely was asked to assume without-accident gross business income of \$130,000 for 2024 and thereafter until retirement, before

factoring-in inflation and productivity adjustments. On the basis of those assumptions, he estimated Mr. Meyers' potential income as a self-employed floor layer, adjusted for inflation, would have been \$113,549 per year, after expenses, as of the trial date.

[37] Mr. Szekely then compared that figure to the median income level for residential flooring retail salespersons, which, according to Statistics Canada census figures, adjusted for inflation, he says would be equivalent to \$65,753 as of the trial date. The difference between those two incomes is \$47,796 per year.

[38] Assuming that differential would continue to apply until retirement age, and assuming average labour market contingencies, Mr. Szekely put the present value of that annual loss at \$204,423 to age 65, and \$269,378 to age 70.

[39] The plaintiff submits that it is most unlikely that Mr. Meyers will ever go on to achieve, in his new career, the median level of earnings of flooring salespersons. The plaintiff points to the fact that he is entering the competitive field of sales late in life, with no sales experience, and having had no opportunity to develop client contacts and obtain repeat business. Further, there is the matter of Mr. Meyers' personality; he struck me as certainly capable and honest, but more stoical and reserved in nature and less gregarious than is perhaps typical of retail salespersons. Mr. Meyers' current employer, Mr. McClymont, testified that an income at \$36,000 annually – Mr. Meyers' guaranteed minimum – is on the "low side" of what his salespeople earn, that \$130,000 is the "high side", and that he would like to see his salespeople earning \$50,000 at least. Given what he has seen of Mr. Meyers' abilities, he said that a good result might be him earning \$4,000 to \$5,000 a month; he would like to see Mr. Meyers earning \$50,000 a year "eventually". The plaintiff submits that this projection may fairly be seen as "infused with a degree of hope rather than an ice-cold assessment of reality", but nevertheless concedes that a fair assumption would be an income in the range of \$45,000. Were he to achieve that immediately, the difference between that figure and his assumed without-accident total income of \$113,549 would be \$68,549. The multiplier to age 70 puts the

present value of his loss at \$386,340, which the plaintiff submits is a realistic assessment.

[40] The defence acknowledges Mr. Meyers' testimony that his intention had been to retire from flooring installation at age 70, since, being self-employed, his only source of retirement income would be CPP. However, the defence also notes the evidence of Ms. Landega, who testified in cross-examination that their discussions about retirement planning have been in terms of a goal of retiring in the next five to seven years, i.e. when Mr. Meyers would be age 64 to 66. (In re-examination, Ms. Landega did say that finances would be a consideration.) The defence acknowledges that the evidence supports some award for future loss of capacity, but simply submits that given Ms. Landega's evidence of his possible retirement age, Mr. Meyers' current age, and his potential for increasing his sales income as his sales skills progress, any assessment would be modest. No particular range of damages is suggested.

[41] I agree with the plaintiff that the hope that Mr. Meyers might attain an average income going forward at the \$50,000 level (before adjusting for inflation) is too optimistic to be a rational basis for a future loss assessment. On the other hand, as I have set out above the without-accident income level assumed by Mr. Szekely is far too high. I find the most reasonable assessment, taking into account the full range of real and substantial possibilities of contingencies and variations, is to assess the loss on the basis of the most substantially likely outcome reflecting a with- and without-accident differential of \$35,000; and on the basis that the cumulative real and substantial possibilities of losses exceeding that amount somewhat outweigh the possibilities of lower losses.

[42] As to the multiplier to be used, I find retirement at an earlier age would have been more likely than age 70. In reaching that conclusion I am mindful of Ms. Landega's evidence, and I also give weight to Mr. Szekely's testimony that on Statistics Canada's records, the median retirement age of flooring installers in 2023 was 66. (Mr. Szekely noted that this figure did not distinguish between self-employed

installers and employees, and that over all occupations on average, the retirement age of Canadian males is about 1.4 years higher for the self-employed. It is difficult to give any weight to that, however, for two reasons; there is no evidence that the all-occupation figure has any validity when applied to the particular occupation of flooring installers; and, there is no evidence as to what proportion of all floor installers are employees.) Assessed on the basis of the multiplier applicable to retirement at age 67, the present value of a loss at \$35,000 annually would \$173,950.

[43] As I have said, I give greater weight to the possibilities of the loss exceeding that amount. I assess Mr. Meyers' future loss of earning capacity at \$200,000.

#### **Cost of Future Care**

[44] Dr. Graboski, a physiatrist, conducted an independent medical examination for the plaintiff in December 2017. She recommended physiotherapy and a core stability exercise program as useful, and recommended counselling to address the driving anxiety issues. It is not clear whether the counselling undertaken by Mr. Meyers was in response to that recommendation. As noted, Mr. Meyers did undertake a course of physiotherapy – 38 treatments over approximately 2 1/2 years, ending in March 2019 – but this was, he said, concentrated on his neck, which has not been an issue for him recently. These recommendations appear to be stale-dated.

[45] The defence expert witness, the physiatrist Dr. Bentley, made recommendations including water- and land-based active rehabilitation for six weeks; a gym program with a personal trainer, twice a month for a year; and follow-up with an interventional paid specialist on an as-needed basis. No specific evidence is put forward as to the cost of such programs; the plaintiff submits that a modest award of \$7,500 would be appropriate. However, I cannot, from Mr. Meyers' evidence, find any basis for concluding that he likely would pursue such programs if damages were awarded. With his change in careers he feels able to manage with Advil, and vaping. I make no award for future care.

**Special Damages**

[46] Special damages have been agreed at \$2,220.67, subject to the provisions of the *Insurance (Vehicle) Act*.

**Conclusion**

[47] Damages are assessed on the following basis:

- a) Non-pecuniary damages: \$105,000
- b) Past loss of earning capacity \$147,150 (gross)
- c) Future loss of earning capacity \$200,000
- d) Special damages \$2,220.67

“A. Saunders J.”