

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rebman v. Cheong*,  
2025 BCSC 271

Date: 20250220  
Docket: M205945  
Registry: Vancouver

Between:

**Grace Sherri Rebman**

Plaintiff

And

**Gilbert Yun Cheong**

Defendant

Before: The Honourable Mr. Justice Coval

## Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.  
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and December 18, 2024

Place and Date of Judgment:

Vancouver, B.C.  
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**Introduction**

[1] Ms. Rebman seeks damages from Mr. Cheong for the injuries she suffered in a motor vehicle accident in Vancouver on June 18, 2018.

[2] Ms. Rebman is 66 years old. It is uncontested that the accident caused a disc herniation in her lower back and various soft tissue injuries. While her soft tissue problems largely resolved within six months, her back injury developed into constant, chronic neuropathic pain, radiating from her lower back down through her right hip, buttock, leg and foot.

[3] Before the accident, Ms. Rebman was a high-energy, active person and successful school administrator and counsellor. Over the past six years, various treatments did little to improve her chronic pain and virtually all aspects of her life have been diminished.

[4] On September 16, 2024, just a few weeks before trial, Ms. Rebman had a spinal cord stimulator (“SCS”) implanted in her lower spine at St. Paul’s Hospital in Vancouver. Initial indications are positive, and the hope is that the SCS will reduce her pain and allow her to return to a more active life.

[5] Ms. Rebman seeks damages of approximately \$1.2 million.

[6] Mr. Cheong argues for damages in the range of \$285,000-\$385,000. He submits that the amount sought by Ms. Rebman fails to reflect her pre-existing medical condition or the expert evidence that the SCS will likely reduce her pain and allow her to return to her pre-accident employment. He further argues that her damages should be reduced by 40% to reflect her share of responsibility for the motor vehicle accident.

[7] For the reasons that follow, Ms. Rebman is awarded damages of \$704,981.

**Before the Accident**

[8] Ms. Rebman and her spouse, Marina Dunatov, were married in July 2012. They live in the False Creek area of Vancouver.

[9] In 1979, Ms. Rebman obtained a Bachelor of Education from the University of British Columbia. She later obtained a Post-Graduate Diploma in Counselling and a Master's Degree in Counselling Psychology.

[10] From 1987 to 2015, she worked for various school districts in the Lower Mainland as a classroom teacher, vice-principal, and counsellor. In 2015, she resigned from her vice-principal position, in order to begin collecting her pension. She then began working on contract as an area counsellor for the Richmond School District, where she was much in demand. At the time of the accident, she was working as a counsellor and also working remotely for City University in Seattle, administering and teaching in their educational counselling master's program.

[11] The evidence was clear that, before the accident, Ms. Rebman was a high-energy, warm, positive, and physically active person. At UBC, she played centre for the women's ice hockey team and was an alternate captain. She enjoyed outdoor activities such as walking and hiking, yoga, physically active travel, and various recreational sports. She had an active social life, regularly seeing friends, going to dinners, and enjoying the arts. She and Ms. Dunatov travelled widely, carrying backpacks and enjoying active, physical excursions.

[12] Ms. Rebman's medical history included two successful surgeries for conditions from which she made full recoveries: in 2008, for a herniated disc in her back; and in 2012, for endometrial cancer. In 2011, she was diagnosed with colitis, the severity and effects of which was a matter of dispute in the trial.

### **The Accident**

[13] At around 7:30 a.m., Ms. Rebman was taking her regular route to work in the morning rush hour. She was driving south on Oak Street, at around the 50 kph speed limit, as she approached the uncontrolled intersection at West 13th Avenue.

[14] Mr. Cheong, driving north on Oak, was stopped at W. 13th waiting to turn left. As he pulled across the southbound lanes to make his left turn, Ms. Rebman immediately applied her brakes but could not avoid the front of her car hitting the

rear of his. She described the collision as “happening so immediately” that she did not have time to effectively slow down.

[15] Ms. Rebman described the impact as “medium to severe”. It pushed her car into the southbound curb lane of Oak. She felt an immediate, sharp pain in her lower back. Mr. Cheong came to check that she was alright. He apologized for not seeing her car and offered her assistance. Needing time to collect herself, she called Ms. Dunatov and waited in her car for around 30 minutes before driving back home.

[16] The estimated cost of the vehicle damage was \$2,973.00 for Ms. Rebman’s car and \$8,302.00 for Mr. Cheong’s.

### **After the Accident**

[17] Within a few days, Ms. Rebman sought medical help for pain in her mid- and low-back, which was radiating with burning and numbness all the way down her right leg. At the same time, just four days after the accident, she suffered a serious flaring of her colitis, requiring heavy doses of an anti-inflammatory drug. Despite all this, she managed to work the last few weeks of the school year.

[18] When the next school year started in September 2018, she returned to work but struggled from the worsening of her colitis and pain from the car accident. She tried taking days off and reducing to a four-day week, but found it unsustainable. In November 2018, she was hospitalized for a serious flare of her colitis.

[19] A CT scan in February 2019 revealed a herniated disc in her low back. Ms. Rebman’s pain from the accident worsened to the point of needing Ms. Dunatov’s help dressing and lifting her legs up onto a bed or chair. The pain and burning in her low back and down the right side of her lower body did not resolve.

[20] She was unable to do the things she enjoyed – walking, outings with her dog, helping around the house, and social and recreational activities. She missed most of the rest of the 2018-2019 school year. At the end of the school year, she resigned

from her counselling position because she felt unable to physically sustain a full-time position and wanted to give the school district ample time to find a replacement.

[21] When the next school year started in September 2019, she worked as a part-time, substitute counsellor. In February 2020, she began a biologic drug that improved her colitis.

[22] Ms. Rebman described the time from early 2020 until her SCS surgery in late 2024 as her “plateau period”, meaning that her difficulties from the accident remained fairly consistent without marked improvement. She continued to suffer from the radiating pain and burning down her low back into her hip and leg and numbness in her foot. She had headaches, and nights were particularly bad with pain often waking her up five-to-six times.

[23] Diagnosed with neuropathic pain that was unlikely to benefit from back surgery, she underwent around 18 sets of steroid and anesthetic injections into her L5-S1 intervertebral space. Though painful in themselves, the injections reduced her overall back pain somewhat for a month or two following each treatment.

[24] During this plateau period, she worked initially as a part-time counsellor. Then, from January 2022 to early 2024, she worked part-time on a clinical research project at UBC which allowed her to work flexible hours, one-to-two days a week from home. In early 2024, she stopped working in order to carry out the SCS process.

[25] Ms. Rebman’s evidence was that, at home during this time, her difficulty with bending and other movements meant she could help with dinner, wash dishes and wipe counters, but she needed pacing strategies and was in pain if she went for too long.

[26] In cross-examination, she accepted that her responses in August 2022, to a “Low Back Disability Questionnaire”, accurately summarized her functioning during this plateau period, including that she could: look after herself normally but with extra pain; lift light to medium weights if conveniently positioned; help make dinner, wash

dishes and wipe counters; but her pain precluded her from performing more physical cleaning such as lifting or vacuuming.

[27] In February 2024, Ms. Rebman was told her neuropathic pain disorder made her a candidate for an SCS implant at St. Paul's Hospital. In July 2024, she underwent a trial procedure of surgical placement of electronic leads in her back with an external stimulator. Within a few days, she reported up to a 50-70% reduction in her level of pain in her low back and right hip and leg, but little or no improvement in her functional abilities such as sitting or standing. Two weeks later, when the SCS trial leads were removed, her pain quickly returned to its pre-trial level. Given these results, she was approved for implantation of the spinal cord leads and internal placement of the rechargeable electronic stimulator unit into her lower back. That surgery was done on September 16, 2024.

[28] When Ms. Rebman testified at trial, she was still recovering from her surgery. In her evidence, she described a 40-60% pain reduction, though her functioning was still limited by post-surgical pain and precautions. She testified to being hopeful of further improvement that might allow her to return to a more active life and her counselling work.

### **Plaintiff Experts**

#### **Neurosurgery**

[29] Dr. Navraj Heran testified as an expert in neurosurgery. His independent medical examinations were on February 5, 2021 and May 10, 2024, and his report was dated July 23, 2024.

[30] After a thorough discussion of Ms. Rebman's history and review of her medical records, Dr. Heran's diagnosis included that, as a consequence of the accident, she suffered a disc herniation impinging on the right L5 nerve root, which developed into chronic right-sided S1 neuropathic pain from L5–S1 level. In his view, this diagnosis was confirmed by the absence of any nerve compression in her MRI of May 27, 2024, and the benefit from the SCS that she reported at his second

examination. In his testimony, he explained that her ongoing pain was due, not to any structural damage, but was intrinsic to the nerve root hypersensitivity creating abnormal signals in her neuropathways at L5–S1.

[31] Dr. Heran explained that the herniated disc bulge in L5–S1 explained her difficulties walking and severe pain after the motor vehicle accident. Her improvement up to the summer of 2020 occurred because – as the 2024 CT scan showed – this disc bulge gradually resorbed back into her spine, as sometimes occurs. Due to the resorption, she was not a candidate for surgery.

[32] In his testimony, he described the probable outcome of the SCS being to reduce her symptoms to a modest or marginal extent. He characterized her reported 50–70% improvement after five weeks post-implant as a moderate benefit, but cautioned that this may not be her ultimate outcome from the surgery and that her pain would increase with dynamic movement. He testified that she was still at major risk for exacerbations or aggravations of her symptoms, given the persistence of low back pain and the radiation down her right leg in a nerve distribution. In his view, a major benefit or cure was unlikely, and 15–20 hours per week was the maximum expected work tolerance even with a sit/stand desk and sedentary, light work.

[33] For future care, he recommended a combination of 12 active and 12 passive treatments annually, plus an additional 12 for temporary worsening caused by physical activity which was expected to escalate her pain at times. He did not recommend a scooter, chairlift, homecare, or house attendant. He thought some housekeeping might be useful a few hours a week. Recumbent bicycles were available in many gymnasiums. He did not think additional medication would provide further comfort beyond the painkillers she was already using.

[34] He thought there was a 5–15% chance she might need further disc surgery, unrelated to the accident, which would require 30 or so additional active or passive treatments over three or four months.

**Rheumatology**

[35] Dr. Rhonda Shuckett testified as an expert in rheumatology and internal medicine. She examined Ms. Rebman on May 21, 2024 and provided a report of July 8, 2024.

[36] Like Dr. Heran, Dr. Shuckett’s report included a thorough history for Ms. Rebman based on her interview and exam and record review. Her main diagnosis was “severe mechanical low back pain and right-sided sciatica in the aftermath of the subject MVA of June 18, 2018.” Noting that Ms. Rebman no longer had the herniated disc on her L5–S1 right side, she too diagnosed the pain as neuropathic, meaning that the neural/nervous system pathways have become activated since the accident resulting in “central sensitization of her pain”.

[37] Dr. Shuckett further diagnosed some soft tissue and joint injury to her spine and neck from the accident and spasm and pain in the neck, shoulder regions, and tension headaches all from the accident.

[38] For prognosis, Dr. Shuckett testified that, after three years or more from an injury such as this, the prognosis for further improvement diminishes. She noted that Ms. Rebman had tried various drugs for neuropathic pain which had not succeeded and had cortisone injections and nerve blocks which had not alleviated her pain in the long run.

[39] Her prognosis regarding the SCS was that outcomes were difficult to predict and her overall view was guarded because of Ms. Rebman’s chronic pain well beyond three years. In cross-examination, she agreed that this area of research was relatively new and evolving and the best studies available on the topic did not provide guidance for this situation because the majority of the pain profiles were different. Her view was that, what is known, raises concerns about functioning beyond six months, and the benefits Ms. Rebman experienced in the acute phase did not provide much guidance about what might occur six months or one year from now. Regarding Ms. Rebman’s work tolerance and durability from the stimulator, she expected “modest improvement, if that”.

### **Cost of Future Care**

[40] Ms. Louise Craig testified as an expert in physiotherapy and the evaluation of loss of capacity and cost of future care. Her report of July 26, 2024 analyzed Ms. Rebman's current and ongoing limitations to determine her care needs and associated costs. In round numbers, she recommended one-time expenditures of \$29,000-\$40,000 and ongoing annual costs of \$33,000-\$38,000.

[41] Ms. Craig's report was based on Ms. Rebman's self-reporting, her medical reports and Ms. Craig's findings in her home visit and functional screening for around one hour on July 9, 2024. Her recommendations were based on proactively "maintaining health and residual function."

[42] In the home visit, Ms. Craig's plan was to have Ms. Rebman demonstrate the physical movements associated with basic tasks in the home – such as reaching for laundry, stepping into the shower, and sitting on the toilet. However, she found Ms. Rebman unable to do most of these actions because of her pain. For example, she was unable to step over into the bathtub to access the shower, or move safely up a few steps of stairs even using the handrail. In the end, Ms. Craig did almost no physical effort testing to assess Ms. Rebman because her significant pain prevented her from crouching, stooping, lifting, walking up the stairs, and so forth.

[43] A complication with Ms. Craig's report is that her home visit was the day after Ms. Rebman's surgical procedure when the SCS trial leads were inserted in her back. From Ms. Craig's report and testimony, it appears she was unaware at the time that Mr. Rebman was in pain from this surgery and subject to post-surgical instructions to avoid bending, lifting, twisting, etc.

[44] In cross-examination, Ms. Craig agreed that the conclusions in her report would change if: (a) a significant part of Ms. Rebman's pain was from her surgery the day before; or (b) she had 40-60% improvement in her pain from the SCS.

[45] In cross-examination, Ms. Rebman agreed that Ms. Craig could not test her functioning on July 9, because of pain from the implant of trial leads the day before

and the post-surgical instructions of what movements to avoid while healing from surgery.

### **Economics**

[46] Mr. Darren Benning testified as an expert in economics. His report of July 29, 2024 provided future income loss multipliers and present values for future care costs applicable to Ms. Rebman's situation.

[47] On future income loss, he provided multiplier values for Ms. Rebman working to age 75. These values adjusted for the risk of disability and unemployment based on broad statistical averages. He also provided multipliers for future care costs up to a life expectancy of 87.

### **Defence Experts**

#### **Neurology**

[48] Dr. Scott Paquette, a neurosurgeon at the St. Paul's Interventional Pain Clinic, testified as an expert in neurosurgery, including implantation of SCS. As one of two surgeons performing these procedures in British Columbia, Dr. Paquette has performed around 100 such implants annually for the past six years, 50% as lead surgeon and 50% assisting.

[49] In addition to being an expert witness for the defence, Dr. Paquette was involved in Ms. Rebman's process and procedure at St. Paul's. When conducting her IME in February 2024, Dr. Paquette advised Ms. Rebman she was a good candidate for SCS to treat her pain, and she informed him that she was in fact currently being screened for that process. Based on what he saw of Ms. Rebman during the IME, Dr. Paquette supported her candidacy and was ultimately the assistant surgeon in her two SCS surgeries.

[50] Dr. Paquette agreed that the accident caused Ms. Rebman's back and leg pain issues. His prognosis was more optimistic than Dr Heran's. He testified that 75% of VGH's SCS patients opted to keep the SCS in the long term, indicating material benefits from the procedure. While acknowledging that some studies

referred to average success rates of around 50%, with success defined as at least a 50% pain reduction, St Paul's experienced a higher rate of success. In cross-examination he said that about half of those who undergo trials for SCS benefit and, of those that do, there is "up to" a 70% reduction in pain.

[51] His view was that, if she were a good responder to the SCS and achieved a 70% reduction in her pain, this would significantly reduce any vocational impact of her back pain and might allow her to return to nearly full-time work.

### **Gastroenterology**

[52] The gastroenterology report of Dr. James Gray, was admitted without cross-examination and his opinions were not contested by Ms. Rebman.

[53] His key opinion was that the accident had no "applicable impact" on her colitis symptoms. His opinion regarding her flare immediately after the accident was that it was "more likely" the natural history of her colitis escalating as she tapered off her anti-inflammatory medication.

### **Key Findings**

#### **Credibility and Reliability**

[54] I find Ms. Rebman was a reliable, credible witness throughout her testimony. She was clear, matter-of-fact, reasonable and objective. At no point did she appear to exaggerate her situation or evade reasonable concessions.

[55] In closing submissions, the defendant acknowledged the credibility of her testimony but argued that two important aspects of her evidence were unreliable: (i) how the accident occurred; and (ii) the severity of her colitis.

[56] The defendant argued that, on (i), there was a significant discrepancy between her evidence in discovery and at trial; and on (ii), her evidence was contradicted by her own reporting to her treating physicians. I consider these issues below.

**Injury Diagnosis**

[57] There is no dispute that the accident caused Ms. Rebman the following injuries:

- a) Injury to the L5/S1 area of her lower back, resulting in chronic neuropathic low back pain that radiates into her right hip, buttock and right leg.

In lay terms, even after her herniated disc resorbed sometime around 2019, and so ceased pressing on the nerves in her low back, these nerves kept firing thereby generating chronic pain;

- b) Mood disturbance, though not rising to the level of a psychiatric diagnosis; and
- c) Headaches and discomfort in her neck and upper back which was much improved after around six months.

**Colitis**

[58] The defendant submits that Ms. Rebman’s colitis caused her serious issues until early 2022, which would have caused her significant missed work even if the accident had not occurred.

[59] I accept Ms. Rebman’s evidence that from 2011, when her colitis was diagnosed, until the accident in 2018, she missed work infrequently and only when she had major flares of her condition. One such flare was in 2014-15. This, combined with anemia and a potential cancer scare (which fortunately did not materialize), resulted in around nine months of leave. Another flare, in March-April 2018 following a trip to Mexico, resulted in a week’s missed work.

[60] Ms. Rebman’s evidence of the limited effect of colitis on her work was supported by the testimony of Mr. Jim Allison, a principal at Steveston-London Secondary School who worked with Ms. Rebman from 2010-2014. I accept his evidence that she was hard-working and stoical and that she regularly managed to work through her colitis, at most going home occasionally at 4 p.m., being a bit earlier than usual, when having a bad day with it.

[61] As previously mentioned, in June 2018, just days after the accident, Ms. Rebman had another flare, due perhaps to being tapered off the anti-inflammatories she had been on since her previous flare in March-April 2018. I accept Dr. Gray's uncontested opinion that this flare in June 2018 was unrelated to the accident.

[62] I accept the following evidence from Ms. Rebman about her colitis since the accident. By around December 2018, her colitis flare from June had subsided, as indicated by her ceasing anti-inflammatory medication at that time. In 2019, she missed work due to a combination of colitis difficulties and pain from the accident. In around April 2020, she began taking biologics for her colitis. This significantly improved her situation, though her colitis continued to be bothersome at times and the new drugs had some side effects. Her evidence of the benefits from biologics was supported by Drs. Shuckett and Gray, both of whom opined on the efficacy of biologics in managing colitis. Consistent with her work history before the accident, virtually all missed work from April 2020 forward was due to her pain from the accident, not her colitis or the biologics. Her colitis has been well controlled since 2022 by the biologic medication.

[63] The defendant argues, based on the medical records of 2019-2021, that Ms. Rebman downplayed her difficulties from colitis in those years. The records indicate: colitis causing her to miss work (in January 2019); it being her most limiting problem (December 2019); debilitating side effects from the biologics (February-June 2020); serious weight loss (August 2020); and the need to double her biologics dose (December 2021).

[64] Prior cases provide well-known cautions about drawing conclusions from the entries in a party's medical records (*Edmondson v. Payer*, 2011 BCSC 118, paras. 21–36). Such entries are not intended to be a word-for-word record of the discussions; there is no record of the questions asked; and they are usually just paraphrases of what the doctor considered pertinent to the treatment. From my review of the records in question, these cautions appear to apply in this case.

[65] In the end, I found Ms. Rebman's evidence about her colitis cogent and persuasive and I do not accept that she downplayed her post-accident colitis difficulties.

### **Recurrent Disc Herniation**

[66] I accept Dr. Heran's uncontested opinion that Ms. Rebman has a 5-15% chance of a recurrent disc herniation, unrelated to the accident, possibly requiring further treatment and surgery. Both parties agreed this was a real and substantial possibility that needed to be accounted for in the assessment of her damages. I therefore take it into account below, though I give it little weight because of the long odds of it occurring and the uncertainty of what it might entail.

### **Consequences of the Accident**

[67] The findings in this section are based on the evidence of Ms. Rebman and her family members: Ms. Dunatov, Alicia Rebman (her niece), Kirk Rebman (her older brother), and Cindy Voigt (long-time friend). Their evidence was not challenged by the defendant and I found them to be reliable, credible witnesses.

[68] Throughout her life before the accident, Ms. Rebman was a high-energy, physically active, and social person. She enjoyed vigorous activities, such as hiking and long walks, yoga and physically challenging travel. She relished her career as a school teacher, administrator, and counsellor, finding satisfaction in helping students and their families. She is a positive, warm person, who is physically and mentally tough and has been stoic about her difficulties.

[69] In the two years before the accident, she worked somewhat less than full-time as a school counsellor in Richmond, where she was highly regarded and much in demand. She enjoyed her work and had no immediate plans to retire.

[70] All aspects of Ms. Rebman's life have been severely diminished by the six years of chronic pain endured since the accident. The pain originates in her low back, and continues, with burning and numbness, down into her right buttock, leg and foot.

[71] Her activities, exercise, and social life have all suffered. Never a great sleeper, she regularly wakes five-to-six times a night from her discomfort. She has continued to do yoga, stretch and walk, but at significantly reduced levels. Her travel has reduced from adventurous hiking and walking with a backpack, to ocean cruises with a suitcase on wheels. She has socialized less, and certainly not in the way she did before when she was considered her group's "energizer bunny", with great stamina for exercise, activity and projects such as building outside decks and sheds for herself and her friends. Regarding housekeeping, her pain is worsened by bending and lifting, but she is able to contribute to less-demanding physical tasks if she paces herself. Despite being a positive, tough and stoical person, her situation has caused low moods and occasional feelings of hopelessness.

[72] In 2019, her neuropathic pain forced her to relinquish her contract as an area counsellor with the Richmond School District. Starting in September 2019, she worked as a substitute counsellor, which she continued through 2021 without being able to make a durable return. From January 2022 to early 2024, she worked part-time on a clinical research project at UBC, one-to-two days a week from home. She remains motivated to keep working as a counsellor because she enjoys the work and helping students and their families.

### **Prognosis**

[73] Five weeks after her SCS was implanted in September 2024, Ms. Rebman reported a 40-60% general pain reduction, a 50% reduction in pain from walking 20-25 minutes, and a 30% improvement in her sitting tolerance. In her evidence, she expressed hope for continued, significant improvement from the SCS.

[74] I generally accept the prognosis evidence of both neurosurgeons, Dr. Paquette and Dr. Heran. Both are highly qualified neurosurgeons. Although unlike Dr. Paquette, Dr. Heran does not perform SCS implants, I accept his evidence as of equivalent assistance due to his extensive qualifications and experience as a neurosurgeon familiar with all types of neuropathic pain. Diagnosing and treating

patients with neuropathic pain is a significant part of his practice and he regularly refers, treats, and provides expected-outcome advice to SCS patients

[75] Respectfully, I do not rely on Dr. Shuckett's SCS prognosis, despite her outstanding qualifications as a rheumatologist. In my view, the cross-examination about the reports on which she relied exposed serious limits on the relevance of this evidence to Ms. Rebman's specific situation.

[76] Drs. Paquette and Heran's evidence was generally consistent. Dr. Paquette's prognosis was a reasonable expectation of a 50-70% pain reduction, after Ms. Rebman recovered from her SCS surgery and the fine-tuning and adjustment process were complete. This estimate was accepted by Dr. Heran in cross-examination, after being informed that Ms. Rebman reported a 40-60% pain reduction five weeks after her SCS implant.

[77] Regarding her future physical activity and work, Ms. Rebman justifiably feels uncertain. I accept Dr. Heran's opinion that she is "definitely still at risk for pain escalation" from physical activities such as standing, walking, load-bearing exercises and stretching, and that even a reduction from severe to moderate pain can still be functionally impeding. I did not understand Dr. Paquette to take a different view.

[78] In my view, on the evidence as a whole, the most realistic physical and vocational prediction is that Ms. Rebman will be able to tolerate more walking and sitting, but is unlikely to return to anything resembling her pre-accident physical vigorousness and stamina.

[79] Regarding Dr. Paquette's evidence that, if she achieves a 70% pain reduction, she will be able to work close to full-time with some accommodation and ergonomic support, I find this to be the optimistic, best-case scenario, which has to be balanced against Dr. Heran's concern that she may "not be any better functionally than she is now, but just more comfortable overall".

[80] Taking all this into account, I accept as a reasonable prognosis Dr. Heran's evidence that, as Ms. Rebman's tolerance for work was 10-15 hours/week before

the SCS, it would be reasonable to expect her to achieve 15-20 hours/week afterwards. I find anything more than that is too optimistic to be a real and substantial possibility. To the contrary, in my view, there is a real and substantial possibility that she will be unable to work much in the future. I base this on the serious difficulties she has faced to date and the Dr. Heran’s uncertainty of how she will tolerate increased activity. I also base it on the evidence of the physical demands of work as an area counsellor, including: a heavy caseload of many students; a significant amount of walking (the evidence was approximately 7,000 steps a day); travelling between schools; carrying file materials; standing and sitting during meetings, and the mental and emotional demands of the job.

**Annual Earnings**

[81] In early 2018, Ms. Rebman was given a full-time area counsellor position with the Richmond School District. I accept the evidence of Mr. Larry Atrium, a senior administrator with the School District, that the position was hers to keep as long as she wanted, with no upper-age limit. His evidence was also that there was, and continues to be, high demand for counsellors with her qualifications, experience and strong record.

[82] Ms. Rebman’s annual earnings were as follows (not including pension payments, which have averaged around \$55,000 annually since 2016):

<b>2012</b>	\$94,482
<b>2013</b>	\$84,835
<b>2014</b>	\$25,477
<b>2015</b>	\$65,875
<b>2016</b>	\$84,481
<b>2017</b>	\$72,261
<b>2018</b>	\$96,025
<b>2019</b>	\$1,778
<b>2020</b>	\$58,126
<b>2021</b>	\$19,726
<b>2022</b>	\$26,419
<b>2023</b>	\$23,988
<b>2024</b>	\$2,000-\$3,000

**Liability for the Accident**

[83] Mr. Cheong admits turning left in front of Ms. Rebman’s vehicle while it was an immediate hazard, contrary to s. 174 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

[84] He submits that liability ought to be shared, however, because Ms. Rebman failed to slow down when approaching the intersection. He submits she had an obligation to do so because her vision of the intersection was obscured by a vehicle stopped to her left, in the southbound left lane on Oak Street, waiting to turn left onto West 13th Avenue. Ms. Rebman testified that there was no such vehicle stopped to her left obscuring her view of the intersection.

[85] Mr. Cheong’s evidence was that he “inched out” past this other vehicle, to ensure there was no oncoming traffic or pedestrians crossing West 13th Avenue. Thinking the path was clear, he pulled out and started his left turn. As he crossed the southbound middle lane, he saw Ms. Rebman’s vehicle out of the corner of his eye. He heard her vehicle brake and tried to accelerate to avoid the collision. The right side of her front bumper struck his rear right corner panel, near the wheel.

[86] Mr. Cheong submits that his evidence about the stopped vehicle should be accepted over Ms. Rebman’s denial because she was inconsistent in her description of the accident. In her examination for discovery evidence in 2022, she testified to driving in the far left lane on Oak Street. At trial, however, her evidence was that she was in the right lane, which was also Mr. Cheong’s evidence.

[87] Both witnesses gave clear, cogent evidence about the disputed issue of whether there was a stopped vehicle to Ms. Rebman’s left obscuring her view as she approached the intersection, and neither of their versions was undermined in cross-examination. For this reason, I do not find Ms. Rebman’s previous discrepancy about which lane she was in helpful in determining whether or not there was such a vehicle to her left.

[88] In the end, on a balance of probabilities, I am not persuaded there was such a vehicle. I say this because of the cogency of Ms. Rebman's denial that her view was obscured, and my positive assessment of the reliability and credibility of her evidence throughout the trial. I therefore reject Mr. Cheong's submission that Ms. Rebman failed to exercise her right of way in a safe manner because she did not slow somewhat as she approached the intersection when her view was obscured.

[89] I further find that, even if Ms. Rebman were negligent in not slowing somewhat, this did not cause or contribute to the accident. That is, I reject the defendant's submission that:

The Defendant testified that he tried to avoid the accident by attempting to speed up to clear the intersection when he detected the Plaintiff coming. His right rear corner panel was struck by the right front bumper of the Plaintiff's vehicle. He almost successfully made it through the intersection through his own evasive action.

The Defendant submits that had the Plaintiff made any efforts to slow down.... it is likely the accident would not have happened at all. She would have been able to see the Defendant sooner, and her braking would have allowed him to clear the intersection avoiding a collision.

[90] On the evidence, Ms. Rebman was travelling around 50 kph when Mr. Cheong pulled right out in front of her, just a split second before impact. I accept her evidence that the accident happened almost immediately after Mr. Cheong pulled out and that she had virtually no chance to react. In my view, the most reasonable inference is that, even if she had slowed somewhat as she approached the intersection, there would have been insufficient time to avoid the accident. I am not persuaded by the defendant's speculative submission to the contrary.

[91] Thus I find that Mr. Cheong was 100% responsible for the accident.

**Pain and Suffering**

[92] Ms. Rebman seeks \$175,000-\$225,000. The defendant argues for \$130,000-\$170,000.

[93] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors for assessing this category of damages:

- 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.

[94] Generally speaking, a plaintiff's stoicism should not reduce their damages (*Giang v. Clayton*, 2005 BCCA 54).

[95] The plaintiff's written submissions referred to 14 cases. When asked to identify the ones most relied on, they pointed to the following.

[96] *Gabert v. Krist*, 2018 BCSC 2109 – the plaintiff was 64 when injured and 71 at trial. She received \$160,000 (\$193,049 in 2024). A retired female teacher on call, before the accident she was in good health and active. In my view, her situation was worse than in this case. She suffered life-altering chronic neck pain, nausea, dizziness, relentless tinnitus and headaches, chronic fatigue, and full body pain, with a poor prognosis for any recovery. Her marriage had deteriorated as a result of her injuries.

[97] *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81 – a 48-year-old handyman was awarded \$180,000 (\$228,962 in 2024). Again, I find the situation somewhat worse given his age and prognosis. He suffered from chronic neck, shoulder and back and elbow pain, headaches, dizziness and nausea, a sleep disorder, anxiety and

depression, and had been unable to return to work. He was angry and sad and his personal relationships, including with close family members, had deteriorated. The prognosis for his physical recovery was poor.

[98] *Tritton v. Lai*, 2023 BCSC 956 – the plaintiff was awarded \$190,000. She was 36 years old at the time of the accident. The accident caused her a “debilitating cycle of chronic pain and mental health challenges for the foreseeable future”. Her situation too appears somewhat worse because of her age, mental health issues and pre-existing fibromyalgia.

[99] *Verjee v. Dunbrak*, 2019 BCSC 1696 – the 59-year-old plaintiff received \$150,000 (\$177,700 in 2024). Strong and dynamic before the accident, it caused her chronic neck shoulder and back pain, and severe mental health difficulties of somatic symptom disorder and major depression

[100] *Delli Santi v. Pacific National Exhibition*, 2000 BCSC 716 – a 41-year-old businesswoman was awarded \$200,000 (\$336,033 in 2024). Again, the overall situation was somewhat worse in that her chronic pain caused a major depressive disorder with anxiety and panic attacks.

[101] The defendant points to two cases, *Flynn v. Raj*, 2023 BCSC 1895 and *Corness v. Ng*, 2022 BCSC 334, which awarded \$135,000-\$150,000 to plaintiffs who suffered disc herniations causing comparable situations to Ms. Rebman. The defendant points out that in both cases the plaintiffs were substantially younger than Ms. Rebman and therefore suffered the adverse consequences from a younger age and potentially for a longer time.

[102] Mr. Flynn, 41 years old at trial, was awarded \$135,000. He suffered a disc herniation, as a result of which he was limited to a sedentary life, reading and watching television. He suffered persistent low back pain, burning in his shoulders, and pins and needles into his right leg. He slept poorly and had anxiety and depression short of a psychiatric diagnosis. He stopped working as a heavy-duty mechanic and coaching his children’s sports teams, and had grown withdrawn and

less involved in household chores. His symptoms were likely chronic and his prognosis was guarded.

[103] Mr. Corness, 37 years old at trial, was awarded \$150,000. A skilled home contractor, he was in constant pain. He was able to continue some aspects of his work but nothing like his previous level because of his pain from crouching, squatting and sitting. He had stopped the activities he loved since childhood like water-skiing, wakeboarding and dirt biking.

[104] The defendant says the most similar situation to this case is *Lorenz v. Pabla*, 2021 BCSC 1553. A 65-year-old plaintiff received \$145,300 (including \$55,300 for loss of housekeeping capacity). She had suffered debilitating leg, neck and back pain for six years. A devoted gardener, lawn bowler, homemaker, host, walker and traveller, she could no longer do these things. She had gone from happy and active to depressed and sad. She and her husband were forced to move into a seniors' residence five years earlier than planned, and she underwent extensive back surgery which improved her leg pain but her back pain was unresolved.

[105] I agree with the defendant that Ms. Rebman's housekeeping difficulties are appropriately assessed as part of her non-pecuniary damages (*McKee v. Hicks*, 2023 BCCA 109, para. 112). Ms. Rebman and Ms. Dunatov's evidence was that, even before the SCS, they were able to share housekeeping fairly evenly, with Ms. Dunatov doing the jobs that needed bending, and Ms. Rebman pacing herself and doing more around the sink and table tops. There is also a reasonable likelihood that the SCS will enhance Ms. Rebman's housekeeping abilities.

[106] I find the defendant's cases more applicable. While I have accepted that all aspects of Ms. Rebman's life have been diminished by her chronic pain, she has fared somewhat better than the plaintiff's cases above, and suffered the consequences from an older age. Due no doubt in great part to her own resilience, she has avoided their serious mental health problems. She been able to work part-time, engage in some physical recreational and social activities, and contribute to housekeeping. She has maintained her personal relationships. She has a better

prognosis for pain reduction, though the corresponding improvement in her functioning remains uncertain. I bear in mind, however, that her ability to carry on in these ways is in large part due to her stoicism and toughness.

[107] Taking guidance from the cases as analyzed, I award \$150,000.

**Loss of Past Earning Capacity**

[108] Ms. Rebman seeks (in round numbers) \$335,000-\$358,000. The defendant argues for \$100,000-\$125,000.

[109] Compensation for past loss of earning capacity is based on what a plaintiff would have earned but-for the injury. The burden of proof of actual past events is a balance of probabilities. An assessment of loss of both past and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. The future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation (*Dornan v. Silva*, 2021 BCCA 228, para. 94).

[110] The evidence I have accepted from Ms. Rebman, Ms. Dunatov, and the medical experts establishes that the accident caused her an impairment of earning capacity resulting in a real and substantial loss in the period before trial (*Grewal v. Naumann*, 2017 BCCA 158). In other words, if not for the accident, she would have earned significantly more than she was able to with her injuries.

[111] Ms. Rebman bases her “with accident” earnings on the actual earnings reported in her tax returns. She bases her “without accident” earnings on the evidence of what she would have made as a full-time counsellor from January 1, 2019 to October 21, 2024. She excludes 2018 because she was paid in full for that year.

[112] The range in her damages reflects two alternative reductions for her colitis: (a) 12.85%, reflecting the estimated percentage of income she actually lost due to

colitis from 2012-2017; or (b) 7%, reflecting the improvement in her colitis since 2020 from the biologics. Both calculations then subtract 20% from the additional “without accident” earnings, for income tax.

[113] The defendant’s approach compares Ms. Rebman’s average annual income before and after the accident. Comparing the pre-accident years of 2013-2017 with 2018-2023, indicates a gross loss of \$252,896. From this, it deducts 17% for income tax, and \$40,000 for her inability to work in 2019 due to colitis, reducing the loss to \$169,903. The defendant then submits that colitis would have caused further significant losses in 2020-2023, resulting in the total estimated loss of \$100,000 to \$125,000.

[114] In my view, the defendant’s approach over-estimates the financial effects of Ms. Rebman’s post-accident colitis. It bases her “without accident” earnings on 2013-2017, which included her low income years in 2014-2015 due to her serious colitis flare. I have found her colitis became stable from 2020 forward because of the biologics.

[115] In my view, the plaintiff’s approach is reasonable with one reduction. I find that, without the accident, Ms. Rebman would likely have worked less than full-time for some of the January 2019-October 2024 period. This is supported by considerations such as her: having done so in the two years before the accident; love of travel; age; and annual pension payments.

[116] Using page 73 of the plaintiff’s closing submissions, I take the estimated loss of \$480,239 (based on “without accident” of five years of full-time work), and subtract 30% for the real and substantial likelihoods of part-time work and absence from colitis especially in 2019 and early 2020. This results in a figure of \$336,167. From that, I subtract 20% for income tax, for a figure of \$268,933. I therefore award \$269,000.

**Loss of Future Earning Capacity**

[117] Ms. Rebman seeks an award (in round numbers) of \$417,000-\$845,000. The defendant argues for \$33,000-\$66,500.

[118] Damages for loss of future earning capacity compares the likely future of a plaintiff's working life without her injury to her likely future working life with it. While always challenging to estimate, a particular difficulty here is that Ms. Rebman has only just received the SCS implant, and her resulting pain reduction and physical and vocational functioning are very uncertain.

[119] Ms. Rebman satisfies the requirements for obtaining an award of damages for loss of future earning capacity (*Rab v. Prescott*, 2021 BCCA 345). She has established that: (a) her chronic pain from the accident will lead to a loss of future earning capacity; and (b) the real and substantial possibility that this will cause a financial loss by preventing her from working as much as she would have otherwise. I must therefore assess the value of her possible future loss based on the relative likelihood of what will occur.

[120] Ms. Rebman's estimate is based on the following key assumptions: (i) without the accident, she would have worked full-time to 75; or full-time to 71 and then half-time to 75; (ii) with the accident, she will not work again, or work only as much as 37.5% of full-time. Her estimate also subtracts 5% for absence from colitis and applies the present value multipliers from Mr. Benning.

[121] The defendant's position relies primarily on Ms. Rebman's desire to work, and Dr. Paquette's vocational prognosis. Based on this, the defendant argues for six-to-12 months of lost future earning capacity, resulting in an estimated loss of \$33,000-\$66,500 based on her pre-accident average earnings in 2013-2017.

[122] Alternatively, the defendant submits that, before the SCS, Ms. Rebman was able to work 10-15 hours a week, or 25-37% of full time. With the SCS, it is reasonable to expect she will be able to work 20-25 hours/week. Based on her actual income, it appears that for the two years before the accident she worked

around 80% of full time. Assuming that, and a retirement age of 70, then awarding her two years of income over those five years is conservative, which represents a loss of \$133,000.

[123] I find that, without the accident, Ms. Rebman would most likely have continued working as an area counsellor in the Richmond School District, or something similar, up to around age 71. I base this on her evidence, and that of her family members, of how much she has enjoyed her work and serving her community. This finding is also supported by the evidence of her efforts to continue working through the difficulties from the accident and colitis. I also accept the uncontested evidence of an under-supply of counsellors in the Richmond School District, Ms. Rebman being held in high regard by the administrators in the District, and no maximum age restriction for counsellors.

[124] Having said all that, in my view it is most likely that, without the accident, she would not have worked full-time in this period. I say this because of: the physical and mental demands of the job; the vesting of her pension; her many other interests; and the fact she was not working full-time in the two years before the accident.

[125] I find it most likely that, from 66-70, she would have worked an average of around 75% of full-time, and the likelihood that she would have worked substantially more or less than that basically cancel each other out.

[126] For the same reasons, I find no real and substantial possibility that she would have worked material amounts after that time. To the extent she might have, in my view, it would likely have been at greatly reduced hours which she may well be capable of even with her injuries.

[127] Turning to the “with accident” estimates, I find there is a roughly equal chance over the next five years of Ms. Rebman working either: (a) an average of 15-20 hours/week, if the SCS significantly improves her functioning, or (b) working little, if at all, if it does not. Regarding the latter scenario, in my view, she has been able to continue working up to this point only because of her mental and physical

toughness, and even such a physically resilient and committed person can take only so much discomfort.

[128] Taking the average of these two scenarios represents around 20% of full-time.

[129] In sum, in my view, Ms. Rebman's "without accident" future loss should be estimated based on working five more years, at 75% of full-time, and her "with accident" future loss at 20% of full-time.

[130] I accept the evidence of Ms. Ratcliffe, District Administrator for Learning Services in the Richmond School District from 2015–2022, that area counsellors with Ms. Rebman's qualifications earned around \$109,500 in 2024. Thus, I estimate her annual "without accident" earnings as \$82,125, and with accident" as \$21,900, for an annual loss of \$60,225 for five years.

[131] As I understood the evidence, the present value of that is:  $\$60,225 \times 4.409 = \$265,532$ . I therefore award \$265,000 as a fair and reasonable estimate of this future loss.

### **Cost of Future Care**

[132] Ms. Rebman seeks approximately \$27,700-\$40,000 for one-time care costs plus \$17,500-\$19,500 in annual costs from age 65 to 87. The defendant argues for an award of \$14,700.

[133] Ms. Rebman is entitled to compensation that restores her, as much as possible, to her position as though the accident had not occurred, based on what is reasonably necessary on the available medical evidence to preserve and promote her mental and physical health. Assessment should be based on medical evidence and fair to both parties.

[134] I agree with the defendant that Ms. Craig's report is undermined for not appreciating, at the time of assessment, that Ms. Rebman was in pain from the SCS surgery just the day before and under doctor's orders to limit her exertion and

movements. I reject the plaintiff's argument that Ms. Craig may have been aware of this. There is no mention of it in her report, and in her evidence she did not recall knowing exactly when the surgery occurred. In my view, this miscommunication likely resulted from Ms. Rebman's stoicism, in that she simply failed to advise Ms. Craig of her post-surgical situation. For this reason, I prefer Dr. Heran's future care recommendations, and I reject many of Ms. Craig's recommendations such as washroom renovations, a scooter or chairlift, or the extent of homecare, as these were not supported by the evidence.

[135] Both sides recommended a sit/stand desk, based on the evidence of Drs. Paquette and Heran, at a value of \$1,500.

[136] Dr. Heran opined that physiotherapy, massage and chiropractic would be helpful for temporary pain relief, though it was difficult to predict the extent of relief Ms. Rebman would experience. His general recommendation for chronic pain care was 12 passive and 12 active treatments annually, with 12 additional treatments for occasional flaring of pain. He warned against treatment becoming a lifestyle for Ms. Rebman as people often continue treatments that are no longer necessary.

[137] It is difficult to predict the extent to which such treatments will benefit Ms. Rebman given the SCS implant and the fact that she can achieve some similar benefits from her own long-term commitment to yoga. Overall, I generally agree with the reasonableness of the defendant's suggestions (though I have reduced the number of treatments somewhat): 12 active treatments in the first year to teach an appropriate exercise routine (12 treatments); four active treatments in the subsequent four years to update the program quarterly through age 70 (16 treatments); 12 passive treatments in each of the first two years to treat flares (24 treatments); and six passive treatments in subsequent three years through age 70 to treat flare-ups (18 treatments).

[138] This is 28 active treatments with a kinesiologist at \$80 per session, and 42 treatments with a physiotherapist or massage therapist at a cost of \$95 per session. Adding an additional amount for initial assessments, I award \$6,500.

[139] I also agree with the defendant’s cost of future medications estimate of \$5,000. Thus, total cost of future care is \$1,500 plus \$6,500 plus \$5,000, for a total of \$13,000.

**Special Damages**

[140] These are agreed at \$7,981.

**Conclusion**

[141] The defendant is found 100% liable for the motor vehicle accident in question.

[142] Ms. Rebman is awarded the following damages:

Pain and Suffering:	\$150,000
Past Loss:	\$269,000
Future Loss:	\$265,000
Cost of Care:	\$13,000
Specials:	\$7,981
<b>TOTAL:</b>	<b>\$704,981</b>

[143] Pursuant to Mr. Benning’s evidence, I leave it to the parties to work out any applicable tax gross-up for future costs of care, taking into account eligible medical expenses. If they are unable to agree, this gross-up can be assessed and certified by the Registrar.

[144] Subject to the parties wishing to speak to costs, Ms. Rebman is awards costs of the action at Scale B.

“Coval J.”